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The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.


Also Present: Representatives Foxx, Scott, and Krishnamoorthi.

Staff Present: Bethany Aronhalt, Press Secretary; Andrew Banducci, Workforce Policy Counsel; Courtney Butcher, Director of Member Services and Coalitions; Ed Gilroy, Director of Workforce Policy; Jessica Goodman, Legislative Assistant; Callie Harman, Legislative Assistant; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; James Mullen, Director of Information Technology; Krisann Pearce, General Counsel; Lauren Reddington, Deputy Press Secretary; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Olivia Voslow, Staff Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Denise Forte, Minority Staff Director; Christine Godinez, Minority Staff Assistant; Carolyn Hughes, Minority Director of Health Policy/Senior Labor Policy Advisor; Stephanie Lalle, Minority Press Assistant; Kevin McDermott, Minority Senior Labor Policy Advisor; Veronique Pluviose, Minority General Counsel; and Elizabeth Watson, Minority Director of Labor Policy.

Chairman WALBERG. A quorum being present, the Subcommittee on Health, Employment, Labor, and Pensions will come to order.

Good morning. A delight to begin by welcoming our witnesses. Thanks for being here. We appreciate having a table full of witnesses that have some expertise it can share with us as opposed to just listening to ourselves.

After decades of hard work, every American should be able to retire with dignity and peace of mind, but unfortunately, too many Americans are struggling to save for their retirement years. Now more than ever we need policies that empower workers to put
money aside for retirement. These policies should include strong protections for workers.

I was proud to champion a resolution to close a regulatory loophole that would have resulted in countless individuals losing their retirement protections they have long been afforded under Federal law. This loophole was put in place by the Obama administration to allow states to force workers into a government run IRA system.

The answer to our nation's retirement challenges is not more government. Part of the answer is getting the economy to grow faster. The sluggish economic growth, weak job creation, and stagnant wages we have seen in recent years certainly have not made it easy for people to save for retirement.

After all, the most important step toward a strong and secure retirement is a good paying job. Working families are also in desperate need of health care relief. With health insurance premiums increasing faster than wages, something has to give. For many individuals that means saving less for the future.

That is why the committee has advanced free-market health care reforms that lower costs. We have also played an important role in delivering regulatory relief to help create jobs and grow the economy.

I say all this because truly tackling the issue of retirement security is going to require a holistic approach. We can start by removing regulatory barriers facing retirement savers.

For years, this committee has led the fight against the flawed fiduciary rule. According to one report, this rule was the most expensive regulatory action of 2016, and will impose more than $46 billion in costs on retirement savers. Let me repeat that, $46 billion. That is real money even around here.

Now, we all agree that investment professionals should act in the best interests of their clients. In fact, this committee advanced bipartisan legislation increasing protections for retirement savers.

However, the last thing working families need is to lose access to their trusted financial advisors. Unfortunately, that may be the case for low and middle-income families if the flawed fiduciary rule takes effect. Already, we are seeing the types of services those with fewer savings depend on begin to diminish.

As this trend continues, many individuals will no longer be able to afford retirement advice. They will be left with robo-advisors or forced to fend for themselves, and even worse, maybe to do nothing at all.

It should come as no surprise that the robo-advice industry has come out in full force in defense of the fiduciary rule. An executive of one of the industry's largest firms recently told the press, and I quote, “An expansion of the fiduciary rule would be nice for our business.” Another robo-advisor said, and I quote again, “They are sad that it looks like the rule might go away.” There was even a national ad campaign urging the Trump administration to keep this flawed rule in place.

We have nothing against robo-advisors, but people should have choices and access to retirement advice in all forms. However, many individuals prefer to choose personal financial advice, but as we have warned all along, that choice may soon be out of the reach for those who can no longer afford it.
We have also warned of the impact on small businesses. Many rely on financial advisors as they set up retirement plans for their employees, but as one Indiana small business owner testified before the committee, this rule, and I quote, “Puts all of that in jeopardy.”

What we should be doing is making it easier for small businesses to offer retirement plans to their employees. According to a recent survey, 37 percent of small businesses cite “set up expenses” as the key reason for not offering retirement benefits. One way small businesses could provide retirement plans to workers at a more affordable cost is through multiple employer plans or MEPs.

Unfortunately, these plans are currently restricted by the federal government. With roughly 58 million American small business employees, it is time to change that. We should empower small businesses to band together through MEPs, an idea that has received bipartisan support over the years.

Additionally, we need to reduce red tape. We can file taxes online and students can receive information about their federal student loans online. Yet, the federal government limits the ability of workers and retirees to receive information about their retirement accounts in anything but a hard copy. Simply allowing employers to provide information about retirement benefits electronically would reduce the cost of administering retirement plans by an estimated 36 percent.

All of the solutions I outlined have one thing in common. They would all empower workers and families to save more for retirement. Many in this room likely have other ideas as well, and that is exactly why we are here, to have a thoughtful dialogue on how we can strengthen retirement security for all Americans.

I look forward to our discussion, and I will now yield to my friend, Ranking Member Sablan, for his opening remarks.

[The statement of Mr. Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Retirement security is a leading priority for this committee, and one that crosses party lines. After decades of hard work, every American should be able to retire with dignity and peace of mind. Unfortunately, too many Americans are struggling to save for their retirement years. Now more than ever, we need policies that empower workers to put money aside for retirement.

Those policies should include strong protections for workers. I was proud to champion a resolution to close a regulatory loophole that would have resulted in countless individuals losing the retirement protections they have long been afforded under federal law. This loophole was put in place by the Obama administration to allow states to force workers into government-run IRAs.

The answer to our nation’s retirement challenges isn’t more government. Part of the answer is getting the economy to grow faster. The sluggish economic growth, weak job creation, and stagnant wages we’ve seen in recent years certainly haven’t made it easy for people to save for retirement. After all, the most important step toward a strong and secure retirement is a good-paying job.

Working families are also in desperate need of health care relief. With health insurance premiums increasing faster than wages, something has to give. For many individuals, that means saving less for the future. That’s why the committee has advanced free-market health care reforms that lower costs. We’ve also played an important role in delivering regulatory relief to help create jobs and grow the economy.

I say all this because truly tackling the issue of retirement security is going to require a holistic approach. We can start by removing regulatory barriers facing retirement savers.
For years, this committee has led the fight against the flawed fiduciary rule. According to one report, this rule was the most expensive regulatory action of 2016 and will impose more than $46 billion in costs on retirement savers. Let me repeat that. $46 billion. Now, we all agree that investment professionals should act in the best interests of their clients. In fact, this committee advanced bipartisan legislation increasing protections for retirement savers.

However, the last thing working families need is to lose access to their trusted financial advisors. Unfortunately, that may be the case for low- and middle-income families if the flawed fiduciary rule takes effect. Already, we are seeing the types of services those with fewer savings depend on begin to diminish. As this trend continues, many individuals will no longer be able to afford retirement advice. They’ll be left with robo-advisors or forced to fend for themselves.

It should come as no surprise that the robo-advice industry has come out in full force in defense of the fiduciary rule. An executive of one of the industry’s largest firms recently told the press, “An expansion of the fiduciary rule would be nice for our business.” Another robo-adviser said they “are sad that it looks like ... the rule might go away.” There was even a national ad campaign urging the Trump administration to keep this flawed rule in place.

We have nothing against robo-advisers. People should have choices and access to retirement advice in all forms. However, many individuals prefer to choose personal financial advice. But as we’ve warned all along, that choice may soon be out of reach for those who can no longer afford it.

We’ve also warned of the impact on small businesses. Many rely on financial advisors as they set up retirement plans for their employees. But as one Indiana small business owner testified before the committee, this rule “puts all of that in jeopardy.”

What we should be doing is making it easier for small businesses to offer retirement plans to their employees. According to a recent survey, 37 percent of small businesses cite “set up expenses” as the key reason for not offering retirement benefits. One way small businesses could provide retirement plans to workers at a more affordable cost is through multiple employer plans, or MEPs.

Unfortunately, these plans are currently restricted by the federal government. With roughly 58 million American small business employees, it’s time to change that. We should empower small businesses to band together through MEPs—an idea that has received bipartisan support over the years.

Additionally, we need to reduce red tape. We can file taxes online and students can receive information about their federal student loans online. Yet the federal government limits the ability of workers and retirees to receive information about their retirement accounts in anything but a hardcopy. Simply allowing employers to provide information about retirement benefits electronically would reduce the cost of administering retirement plans by an estimated 36 percent.

All of the solutions I outlined have one thing in common. They would all empower workers and families to save more for retirement. Many in this room likely have other ideas as well, and that’s exactly why we’re here—to have a thoughtful dialogue on how we can strengthen retirement security for all Americans.
Challenges Facing Retirement Savers

Median retirement account balance for families is $2,500

$46 BILLION

Fiduciary rule will cost retirement savers more than

40 MILLION have no savings in 401(k) or IRA.
Mr. SABLON. Thank you very much, Chairman Walberg, and good morning, everyone, and to our witnesses who have traveled here to join us this morning.

Thank you, Chairman. I appreciate you convening today’s hearing. We are in the midst of a retirement savings crisis. Tens of millions of Americans who work in the private sector lack access to a retirement savings plan at their jobs. This problem is particularly acute for people of color, as only 54 percent of African American and Asian employees, and 38 percent of Latino employees work for an employer that sponsors a retirement plan.

We know that many middle and low-income workers lack the resources to save for their own retirement, and that studies have shown that African American and Hispanic families are far behind white families in retirement savings, and that is deeply concerning.

I look forward to today’s discussion on how to ensure that everyone is planning and saving for retirement, and can get the investment advice that is in their best interests. I hope we can explore bipartisan ideas such as open MEPs aimed at incentivizing small businesses to offer retirement savings plans, and allowing those that do not to automatically enroll workers into the electronic delivery of disclosures and other retirement plan documents.

Last Congress, I was a co-sponsor of H.R. 2656 authored by Dr. Roe and Congressman Polis, to allow for this kind of automatic enrollment of retirement plan communications.

According to AARP, having access to a workplace retirement plan makes workers 15 times more likely to save, so we should be discussing ways to encourage or require employer sponsorship of retirement vehicles and automatic IRA legislation.

We should also be examining ideas that address issues associated with job changes, rollovers, and default investments that could better maximize employees’ returns. And recognizing that Social Security is the primary source of retirement income, we must work to preserve and modernize it, and consider the impact of taxation of benefits on their retirees.

Mr. Chairman, I have to note that bipartisan ideas are unfortunately not the place from which we started this Congress or with the Trump administration. Instead, one of the first items of business was to nullify two Obama administration rules aimed at helping states and eligible municipalities to expand working people’s access to retirement savings programs.

For instance, California passed a law and established a program that is estimated to provide 6.8 million workers access to a retirement savings plan. In Illinois, more than one million people are expected to benefit from the state’s retirement savings plans.

These initiatives automatically enroll employees who are not offered a workplace savings plan and enable them to establish an IRA through a payroll deduction. State-based programs allow employees to opt out if they do not wish to participate, and fewer administrative burdens are imposed on employers.

These rules were intended to ensure that these state initiatives did not run afoul of federal law. It is unfortunate that Congressional Republicans and the Trump administration worked together to nullify them.
As our full committee Ranking Member Scott has said, the Congress should not be in the business of destabilizing efforts that increase workers’ ability to save for retirement, and we should not go out of our way to undermine states’ rights to implement their own innovative solutions. I strongly agree with that.

Additionally, the House passed what is known as an age tax, which would force Americans age 50 to 64 to pay premiums five times higher than what others pay for coverage. AARP strongly opposes this provision, and estimates it would add an average of $3,200 annually to premiums for adults age 60 or older.

I am concerned that if TrumpCare ever becomes law, just when Americans are at or approaching retirement age, they would be facing skyrocketing premiums and wondering if they will ever be able to retire.

Mr. Chairman, my Democratic colleagues and I look forward to working with you on bipartisan ideas to help families save for retirement. Thank you again, Mr. Chairman, for convening this hearing. I look forward to the witnesses’ testimony, and I yield back the balance of my time. Thank you, sir.

[The statement of Mr. Sablan follows:]

Prepared Statement of Hon. Gregorio Kilili Camacho Sablan, Ranking Member, Subcommittee on Health, Employment, Labor and Pensions

Thank you, Chairman Walberg. I appreciate you convening today’s hearing. We are in the midst of a retirement savings crisis. Tens of millions Americans who work in the private sector lack access to a retirement savings plan at their jobs. This problem is particularly acute for people of color, as only 54 percent of African-American and Asian employees and 38 percent of Latino employees work for an employer that sponsors a retirement plan.

And we know that many middle and lower income workers lack the resources to save enough on their own for retirement and that studies have shown that African-American and Hispanic families are far behind white families in retirement savings. That’s deeply concerning.

I look forward to today’s discussion on how to ensure that everyone is planning and saving for retirement and can get the investment advice that’s in their best interest.

I hope that we explore bipartisan ideas, such as Open MEPs, aimed at incentivizing small business to offer retirement savings plans, and allowing those that do offer plans to automatically enroll workers into the electronic delivery of disclosures and other retirement plan documents. Last Congress, I was a co-sponsor of H.R. 2656, authored by Dr. Roe and Congressman Polis to allow for this kind of automatic enrollment of retirement plan communications.

According to AARP, having access to a workplace retirement plan makes workers 15 times more likely to save, so we should be discussing ways to encourage or require employer sponsorship of retirement vehicles, such as automatic IRA legislation.

We should also be examining ideas that address issues associated with job changes, rollovers and default investments that could better maximize employees’ returns. And, recognizing Social Security as the primary source of retirement income, we must work to preserve and modernize and consider the impact of taxation of benefits on our retirees.

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These rules were simply intended to ensure that these state initiatives did not inadvertently run afoul of federal law. It is unfortunate that Congressional Republicans and the Trump Administration worked together to nullify them.

As our full Committee Ranking Member, Mr. Scott, has said — Congress should not be in the business of destabilizing efforts that increase workers’ ability to save for retirement. And we should not go out of our way to undermine states’ rights to implement their own innovative solutions. I strongly agree with that.

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I am concerned that if Trumpcare ever became law, just when Americans are at or approaching retirement age, they’d be facing skyrocketing premiums and wondering if they will ever be able to retire.

Mr. Chairman, my Democratic colleagues and I look forward to working with you on bipartisan ideas to help families save for retirement.

Thank you again, Mr. Chairman, for convening this hearing. I look forward to the witnesses’ testimony. I yield back the balance of my time.

Chairman WALBERG. I thank the gentleman. Pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

[The information follows:]
Hearing Statement
The American Council of Life Insurers
Before the
U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions

“Regulatory Barriers Facing Workers and Families Saving for Retirement”

May 18, 2017

The American Council of Life Insurers (ACLI)\(^1\) is pleased to submit this statement for the record regarding regulatory barriers facing workers and families saving for retirement. We thank Chairman Tim Walberg (R-MI) and Ranking Member Gregorio Kilili Camacho Sablan (D-Northern Mariana Islands) for holding this important hearing. In this statement, we highlight several categories of regulatory barriers that face workers saving for retirement relating to: pension coverage, plan participation and education, lifetime income and the disability claims process. We look forward to working with this Subcommittee, the full Committee, and the Department of Labor (DOL) to address these barriers.

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. To provide context on the extent to which the life insurance industry helps Americans prepare for retirement, in 2015 alone, American families received $328 billion in annuity payments, $119 billion in life insurance death benefits, $18 billion in disability income insurance benefits, and $9.6 billion in long-term care insurance benefits. Through these products, Americans are able to plan, save and guarantee those savings for a secure retirement.

First and foremost, DOL’s fiduciary regulation is the most impactful regulatory barrier facing workers and families saving for retirement. The DOL needs to immediately issue a further delay of the entire fiduciary regulation until it has completed its re-examination of the regulation to the satisfaction of the

\(^1\) The American Council of Life Insurers is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 78 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States.
President. As addressed more fully in our April 17, 2017 comment letter to the DOL, the Secretary of Labor should conclude the examination with a determination that the regulation must be rescinded and replaced. We are very appreciative of all the congressional calls to and letters that have been sent to the Secretary to date, including the Committee’s Republican letter to DOL dated April 17, 2017, urging DOL to do the same. This guidance is desperately needed given the current delay expires June 9, 2017.

Our Current Retirement Savings System is Working and Should be Preserved

Our retirement system is based on: employment-based retirement plans; personal savings (including IRAs, individual annuities, and regular savings and investment accounts); and Social Security. All three are important and play a vital role in retirement security.

Current tax incentives for retirement savings successfully help millions of American families accumulate savings and improve their retirement security. As Congress looks to reform the tax code, these incentives must be preserved. Last year, the Bureau of Labor Statistics reported that nearly 80 percent of full-time civilian workers have access to a retirement plan, and more than 80 percent of full-time civilian workers participate in a plan. All workers have access to individual annuities and IRAs.

As workers move from job to job, it is not uncommon for them to have more than one retirement account. A recent survey of one million employees who have both a workplace savings plan, such as a 401(k) or 403(b), and an IRA found that the average combined balance was $225,600 at the end of 2015 for all workers, of all ages, in the sample. Combined balances rose by age group from $29,834 for those aged 25 to 29 and to $529,669 for those aged 70 to 75.

As the 401(k) was not introduced until the early 1980s, not enough time has elapsed for workers to retire after working a full 40- to 45-year career while contributing to the 401(k) system. However, a study found that accumulations through 401(k) plans, including rollover IRA balances, can generate significant income for retirees across all income groups over a full working life. The model includes Social Security income in its calculation. Employees can build up significant accumulations when they have continuous 401(k) coverage, even when equity returns are assumed to be lower. The model found that those with continuous coverage would reach replacement rates (how much a retiree will earn in retirement compared to the income he earned at the end of his employment) at retirement between 51 percent for the lowest-earning one-fourth (or quartile) of the population, and 69 percent for the highest income quartile. When combined with estimated Social Security payments, these accumulations could provide a replacement of 103 percent for the lowest-earning quartile and between 83 and 86 percent for the other quartiles.

Given the ability of the current retirement savings system to enable workers to achieve retirement security, the current system should be preserved and enhanced. In doing so, the retirement savings

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2 Fidelity First Quarter Retirement Savings Analysis, Press Release, April 29, 2016
3 Id.
5 Id.
6 The model includes 401(k) balances at employers and rollover IRA balances. The EBRI/ICI study focused on participants who were in their late 20’s in 2000 and who would reach age 65 sometime between 2035 and 2039.
7 Id.
8 Id.
9 Id.

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tax deferral provision should not be changed to raise federal revenues to help pay for lower rates. Such a move could have severe and disruptive negative consequences on the current system, and on Americans’ ability to save for a secure retirement, and any changes to the current tax deferral system must be thoroughly studied before pursuing.

Expanding Coverage for Workplace Savings

Although a sizeable majority of full-time workers with access to a workplace plan are covered by workplace plans, more could be done to expand access and coverage. Many small businesses do not offer a retirement savings plan for a number of reasons, but a lack of marketplace product offerings is not one of the reasons. Slightly less than 50% of all workers employed by businesses with fewer than 50 workers have access to a workplace retirement plan. Access is much higher for workers at larger employers. The uncertainty of revenues is the leading reason given by small businesses for not offering a plan, while cost, regulatory and administrative burdens, and lack of employee demand are other impediments cited by small business.10

One policy ACLU supports in expanding coverage for workplace savings is the expansion of private multiple employer plans (MEPs). MEPs enable business owners to pool their resources in a single plan and enjoy the efficiencies and benefits typically limited to large employers. Open MEPs can encourage and facilitate adoption by unrelated employers not yet prepared to sponsor their own stand-alone retirement plan.11 Currently, the Department of Labor inappropriately limits MEP sponsorship solely to employer associations and other affinity groups12 while permitting state governments to offer “Open MEPs” for unrelated private sector employers. ACLU supports and has advocated for DOL to rescind its position on MEPs and for Congress and DOL to expand Open MEP sponsorship. Additionally, ACLU supports and has advocated for Treasury to eliminate the threat of plan disqualification as a result of an error by just one of the participating employers (elimination of the “one bad apple rule”).

Increasing Plan Participation and Education

Regardless of their financial circumstance, over 50 percent of Americans don’t believe they know how much to save for retirement.13 However, the more money an individual contributes to their retirement plan, whether workplace-offered or individual IRA, the more likely they are to be financially secure.14 Fortunately, innovation in plan design is a key reason 401(k) plans have been able to reach more workers and improve the level of retirement benefits over time. One such innovation is automatic enrollment to get more workers into plans. Another change, auto-escalation, gradually increases the share of pay contributed each pay period. A joint study quantifies just how helpful auto-enrollment and auto-escalation can be in improving overall participation and total retirement savings.15 The study uses a projection model to show the increases in replacement rates (how much a retiree will earn in retirement compared to the income he earned at the end of his employment) that can result from

12 In 2012, DOL interpreted ERISA to limit sponsorship of MEPs to employer associations in which member employers have a commonality of interest and some form of participation in the association (Advisory Opinion 2012-04A).
13 ACLU tabulations of Strategic Business Insights, Consumer Financial Decisions, MacroMonitor Data, 2016-17.
14 Id.
those plan design innovations. Legislation had been introduced that would improve the current rules on auto-enrollment and auto escalation and ACLI supports and has advocated for these efforts.16

Another regulatory barrier facing plan participants saving for retirement is the inability of the plan sponsor to provide an employee with a retirement plan statement, notice or disclosure in an electronic format. Instead of receiving a stack of paper, the participant has electronic access to what is essentially an already organized set of information, which is easy to integrate with the rest of a family’s financial records. Additionally, online participants have access to tools such as calculators and other services that adapt to changing technology and provides more helpful information to the user in a visually stimulating way. DOL rules should allow electronic delivery of plan materials to be the default option while allowing participants the option to receive paper copies. ACLI is supportive of legislative efforts to address this issue as well.17 DOL rules should also promote the efficient distribution of notice and disclosure information, allowing consolidation of materials and eliminating costly duplication.

Importance of Guaranteed Lifetime Income to Ensure Retirement Income Security

Just as important as saving for retirement is making the savings last throughout retirement. Regardless of their financial security, nearly three-quarters of Americans are concerned about having adequate income during retirement.18 Annuities can help ensure that individuals have adequate income at advanced ages, even if they live to age 100 and beyond. By providing insurance to support one’s standard of living, annuities are an important tool for retirement planning. Annuities have the potential to provide a higher sustainable level of income than can be achieved with other financial assets. Eighty-two percent of annuity owners think that annuities are an important source of retirement security and make them feel more comfortable in times of financial uncertainty.19

As the first wave of the baby boomer generation reaches retirement age, it is important to educate American workers about the need to consider augmenting Social Security with additional amounts of guaranteed lifetime income. Annuities and other guaranteed lifetime income solutions provide protection against longevity risk by pooling that risk and distributing it among the retiree population, shifting the risk of outliving one’s savings to a life insurer. Only state regulated and licensed life insurance companies can provide guaranteed lifetime income.

ACLI urges policymakers to adopt the following policies to promote the awareness and availability of lifetime income:

Illustrate Individual Account Balances as Guaranteed Lifetime Income - Legislation has been introduced that would help individuals think of their retirement plan savings as not only a lump sum balance, but also as a source of guaranteed lifetime income.20 With this additional income information on a benefit statement, coupled with the Social Security income statement, workers can see how much monthly income they could potentially receive in retirement. Workers can better decide whether to increase these savings, adjust their 401(k) investments, or reconsider their retirement date, if necessary, to assure the quality of life they expect in retirement.

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18 See S. 3471.
17 ACLI supported H.R. 2656, the Receiving Electronic Statements to Improve Retiree Earnings Act introduced in the 114th Congress.
18 The 2016-17 MacroMonitor Data.
20 See S. 3471.
Improve the Annuity Selection Rule for Individual Account Plans - The current DOL safe harbor rule regarding the duties of a fiduciary in selecting an annuity provider for an individual account plan require the fiduciary, typically the employer, to make a determination as to whether “an annuity provider is financially able to make all future payments under an annuity contract.” The regulation should be revised, as this standard is difficult to meet, in part, because it is hard to know how to draw this conclusion. While it is part of a “safe harbor,” the requirement makes it hard to use and it is not a requirement of selection of other financial protection products. Changes must be made to these rules to make it easier for employers to meet their duties while at the same time ensuring a prudent selection.

The safe harbor should be improved to provide greater certainty for plan sponsors and fiduciaries when selecting guaranteed lifetime income products.21 The rule should be clear that it applies to all guaranteed income products, including payout annuities with a fixed term. In considering an insurer’s financial capability, a fiduciary may rely on specific representations from the insurer regarding its status in relation to state insurance regulation and enforcement. It is important to recognize the unique role of state insurance departments in oversight of life insurance companies including the imposition of NAIC uniform rules for the establishment of reserves, the valuation of assets and liabilities, risk-based capital requirements, and required capital. The insurance department conducts routine reviews of the financial strength of each insurer and its ability to meet its commitments and the insurance department has a number of powers to intervene and protect policyholders. This system is a factor in the consideration of the quality of an annuity provider.

Promote Lifetime Income Portability - The portability rules should be expanded to maintain participants’ access to lifetime income benefits. When the termination of a plan’s annuity contract would lead to the loss of access on the part of plan participants to the contract’s guaranteed lifetime benefits, participants need a means to maintain access to these benefits. Legislation has been introduced that would enhance the portability of guaranteed lifetime income products.22 ACLI supports legislation and regulation that would permit the distribution of a participant’s insured plan benefit when a guaranteed lifetime income product is no longer offered by the plan. The rules should permit the distribution to be made via a qualified plan distributed annuity contract or a direct rollover to an IRA or other eligible retirement plan.

DOL’s Disability Claims Regulation Should Also be Delayed and Reviewed

Another regulatory barrier facing workers and families saving for retirement is the DOL’s disability claims regulation which was issued on December 19, 2016, and became effective January 18, 2017. The DOL should immediately delay the rule’s effective date and thoroughly review the projected costs and benefits to consumers. The regulation is inconsistent with congressional intent because it inappropriately applies the Affordable Care Act’s (ACA) claims procedure to disability plans and compromises working Americans’ ability to protect themselves from the financial risk of a disabling illness or injury, causing them to use their retirement savings during the period of disability. The regulation is also inconsistent with DOL’s long-standing guidance distinguishing disability and medical claims.

Indeed, the DOL’s basis for promulgation of the regulation is its belief that disability claimants deserve protections “equally as stringent” as those in place for health care participants under the ACA. In doing so, however, DOL ignored the facts that (1) disability claims adjudication is fundamentally different from medical claims adjudication and (2) there are already existing robust

21 Id.
22 Id.
consumer protections applicable and available to disability claimants that have worked well for over a decade. The DOL also failed to demonstrate a compelling public need for the regulation as required under the Administrative Procedures Act.

The Regulation will significantly delay the claim process for the claimant, and it will significantly increase the administrative burdens on employers and disability insurance issuers. These additional burdens can significantly increase the cost of providing disability income protection. In a voluntary employer disability insurance system, access to disability insurance depends on affordability, which is directly affected by regulatory, administrative, and litigation costs. Survey results show that workers typically underestimate their risk of incurring a disabling illness or injury and go without the income protection they need. Because of these new and unnecessary burdens, fewer American workers may have access to employer provided disability insurance. The practical result is that more families and taxpayers will have to bear the financial risk of a disabling illness or injury, jeopardizing their retirement savings. Therefore, to delay the rule and appropriately review the costs and benefits to consumers would be prudent.

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Over the long run, the nation will benefit when individuals address their long-term financial security needs today, because they will be less likely to rely on public assistance tomorrow. Government policies that encourage families to plan and save for their financial and retirement security should be pursued, and we look forward to working with this Subcommittee, the full Committee, and the Department of Labor to address these barriers.

23 Council for Disability Awareness, Disability Divide Consumer Disability Awareness Study, 2010
May 17, 2017

The Honorable Tim Walberg
Chairman
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Walberg and Ranking Member Sablan:

The U.S. Chamber of Commerce is the world’s largest business organization representing the interests of more than 3 million businesses of all sizes, sectors, and regions. As nearly all of our members are sponsors of employee benefit plans, the Chamber strongly supports policies that encourage employment based retirement saving plans and investment in individual retirement accounts. The Chamber therefore welcomes the Subcommittee’s hearing entitled “Regulatory Barriers Facing Workers and Families Saving for Retirement.”

Earlier this year, the Chamber released Securing America’s Retirement: A Legislative Roadmap that outlines private sector driven policy solutions focused on achieving retirement security for workers. The roadmap focuses on strengthening the voluntary employment based retirement benefits system and enhancing retirement security for workers, while proposing solutions to address the country’s evolving workforce. Specifically, the roadmap includes policy recommendations such as:

• Facilitate Open Multiple Employer Plans (MEPs)—Open MEPs would allow small businesses to “join” a plan rather than having to offer one all by themselves. As a result, small businesses will have greater access to professionally managed plans with good benefits and features at lower costs and with fewer burdens. As such, the Chamber encourages rules that eliminate the “one bad apple” rule; simplify MEP reporting and disclosure obligations under ERISA; and eliminate the “employer commonality” requirement.
• Simplify Compliance Testing—Create new optional nondiscrimination testing and eliminate or relax top-heavy rules to encourage greater implementation and maintenance of 401(k) plans.
• Streamline Notice Requirements—Over the years, new notices were created for specific issues without material coordination with existing requirements. As a result, plan administrators face unnecessary complexity and duplication. Streamlining these notices would save workers money in plan expenses and reduce the difficulty of administering plans.
• Allow Default Electronic Disclosure—The DOL does not permit electronic communication as a default for most plans. Allowing employers to provide information electronically by default, while permitting people to request paper notices and statements, would save workers money in unnecessary paper mailings.

Additionally, the Chamber continues to be concerned about the Department of Labor’s Fiduciary Rule finalized by the Obama administration in April 2016, which has negative implications for small businesses and individual savers. From the very beginning, the Chamber consistently expressed its concerns in comment letters and testimony that the various economic analyses developed by the DOL associated with the Fiduciary Rule are fundamentally flawed. Rather than informing policy decisions by presenting a complete and impartial economic picture of the effect of the Fiduciary Rule, these analyses ignored, discounted, or otherwise failed to consider relevant information to justify predetermined policy outcomes.

Furthermore, new facts and new research are now available that must be taken into account in a new economic analysis. For example, one of our members providing mutual funds has seen the number of orphaned accounts—accounts where there is no longer a financial professional providing assistance to the owner of the shares—double in just the first three months of this year. These small accounts, averaging about $21,000, are no longer being served by financial professionals because the Fiduciary Rule makes it uneconomical to do so, and the provider expects this number to rise until more than 16% of their accounts are orphaned. In addition, a new study estimating the impact of the new class action liability on service providers shows this new expense could reduce operating margins by as much as 30%, which would translate into significant cost increases passed on to retirement investors. Another new study shows the value of financial professionals regardless of their compensation method—working with a professional results in nearly three times the financial assets after 15 years, while losing one’s financial professional can decrease that overall return amount by roughly one-third. The DOL is obligated to take a fresh look without preconceived notions based on the effects in the real world.

As the Chamber has long advocated, a minimum of an additional one-year delay is necessary in order to allow the Department to fully consider the comments it requested on the substance of the Fiduciary Rule, and to draft a proposed regulation revising or rescinding the Fiduciary Rule as authorized in the President’s Memorandum. As the Committee examines regulatory barriers in retirement savings, the Chamber encourages the Committee to work with the new Administration to eliminate the many negative implications of the Fiduciary Rule for retirement savers and workers.

The Chamber looks forward to working with the Committee and all interested parties to strengthen the private retirement system by eliminating regulatory burdens to retirement savings.

Sincerely,

[Signature]

Neil L. Bradley

cc: Members of the Subcommittee on Health, Employment, Labor, and Pensions
Statement for the Record
MetLife, Inc.

Submitted to the
Education and Workforce Subcommittee on Health, Employment, Labor and Pensions
United States House of Representatives

Hearing:
“Regulatory Barriers Facing Workers and Families Saving for Retirement”

May 18, 2017
Introduction

MetLife is pleased to offer comments to the House Education and Workforce Subcommittee on Health, Employment, Labor, and Pensions regarding regulatory barriers facing workers and families saving for retirement.

MetLife is the leading global provider of life insurance, annuities and employee benefits. Since 1868, MetLife has helped people plan for their future by protecting what matters most – their families, their ambitions and their achievements. MetLife has a history of financial strength and stability as well as a proven track record of delivering on promises. MetLife works with families, corporations and governments to provide solutions that offer financial guarantees, including those with a focus on delivering successful retirement outcomes.

MetLife’s Retirement & Income Solutions (RIS), the company’s institutional retirement business which has historically generated over 20 percent of MetLife’s operating earnings, helps its customers meet business, benefits and financial objectives through pension risk management, retirement income solutions, and funding benefit liabilities. For RIS, as of December 31, 2016, Metropolitan Life Insurance Company and MetLife Insurance Company USA managed $93 billion of group annuity assets, including institutional income annuities; $38 billion of transferred pension liabilities; $57 billion of stable value business; and, $27 billion of nonqualified benefit funding assets.

Today, with two-thirds of full-time workers having access to a workplace retirement plan, U.S. workers are accumulating most of their retirement savings through their employer-sponsored plan. Sponsors of workplace retirement plans have made significant strides in helping to stem the retirement crisis with the adoption of features, such as auto-enrollment and auto-escalation, designed to expand participation and increase participant contributions. Still more work is needed to increase financial literacy and incent Americans to better prepare for retirement, particularly for workers who are self-employed or employed by a small business. It is also equally important for legislative and regulatory solutions to enable workers who have saved for retirement to understand what their savings are worth and how to make their savings last.

In particular, plan sponsors are increasingly being called upon to help their defined contribution (DC) plan participants achieve successful retirement outcomes. Critical to that success is ensuring that participants have easy access to lifetime income options. Last year, MetLife commissioned the MetLife Lifetime Income Poll, to understand plan sponsors’ current perspectives about the core purpose of a DC plan. The survey also looked at the most effective ways to deliver lifetime income to plan participants. The poll gauged plan sponsors’ knowledge about the important strides that the U.S. Departments of Labor (DOL) and Treasury have made in recent years – and are contemplating in the future – to strengthen Americans’ retirement security through lifelong income.

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2 MetLife Lifetime Income Poll, 2016
We believe that there are two key regulatory barriers related to guaranteed lifetime income where clarity is still needed, either by regulatory or legislative action: (1) lifetime income disclosures on DC plan benefit statements and (2) a workable safe harbor on which plan sponsors could rely for annuity carrier selection in DC plans.\footnote{There are three foundational elements to enable plan sponsors and service providers to work together to add an income dimension to DC plans: Education, Income Communication and Lifetime Income Options. The first of these, which is necessary to enable plan sponsors to provide employee education about retirement income topics in addition to investment education without fear of fiduciary liability, has been addressed through the Education Exception in the DOL’s new Fiduciary Rule, which provides this necessary expansion to previously issued I3 96-1.} It is clear from our poll findings that plan sponsors, in large numbers, agree that recent regulatory developments are prompting consideration of plan design changes for DC plans. Many also agree that additional lifetime income regulatory action is needed and would make it easier for plan sponsors to offer – and, in turn, plan participants-to select solutions that provide guaranteed income for life.

\textbf{Lifetime Income Disclosures on DC Plan Benefits Statements}

For many years, MetLife has advocated for a requirement that DC plan account balances be presented as lifetime income in addition to the total account balances on annual benefits statements. We remain steadfast in this belief. Our support of lifetime income disclosures was outlined in MetLife’s 2010 responses to the Request for Information (RFI) Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans [RIN 1210-AB33] and MetLife’s 2013 Comments on the DOL’s Advance Notice of Proposed Rulemaking (ANPRM) for Lifetime Income Disclosure for Defined Contribution Plans [RIN 1210-AB20]. We support the Department’s conclusion that it has authority to require lifetime income illustrations under Section 105(a)(2) of ERISA which contains the content requirements for benefit statements, but would welcome legislation to codify the disclosure.

Presented in simple, easy-to-understand language, and provided by the plan administrator at the direction of the plan sponsor, lifetime income disclosures communicate individual account balances in lifetime income terms in addition to investment terms. Providing both the accumulated balance and its lifetime monthly income equivalent can be one of the most effective ways to enable DC plan participants to think about – and use – their DC plan as a retirement income plan, rather than a retirement savings plan.

\textbf{Plan Participants and Plan Sponsors Agree}:

With regard to specific provisions of the disclosures, we believe it is important to show correlation between the current account balance and the future monthly income that current savings will generate – and both plan participants and plan sponsors agree.

Plan participant research released following the issuance of the ANPRM concluded that the overwhelming majority of plan participants (9 in 10 participants surveyed) believe it makes sense to show both the projected account balance and the monthly income equivalent for the projected balance. More than 75% of plan participants surveyed
indicated they would increase their contributions after seeing their retirement income estimates.4

According to the Lifetime Income Poll,5 nearly all plan sponsors (96%) agreed that it would be helpful for plan participants if account balances were required to be communicated as lifetime income—in addition to the total account balance—on DC plan benefit statements. This includes 62% who believe it would be extremely or very helpful for plan participants al. That’s good news since other MetLife research shows that only 39% of DC plan participants recall receiving a written or paper statement illustrating how much income their DC plan would provide in retirement.6

**Bi-partisan and Bi-cameral Support:** On April 6, 2017, bipartisan members of both the House and the Senate re-introduced legislation to require the inclusion of monthly income projections on 401(k) account statements. The Lifetime Income Disclosure Act was introduced in the House by Luke Messer (R-IN), Jared Polis (D-CO) and Mark Pocan (D-WI) as H.R. 2055; and in the Senate by Johnny Isakson (R-GA) and Chris Murphy (D-CT) as S. 868. The bill was previously introduced in the last three Congresses. A provision requiring income projections on plan statements was also included in the Retirement Enhancement and Savings Act (RESA), which was introduced in 2016 and made it through the Senate Finance Committee late in the year. Ultimately there is wide, bi-cameral, bi-partisan support to create greater financial literacy for DC plan participants to allow for sound retirement income planning.

**Workable Annuity Carrier Selection Safe Harbor**

The second critical missing element needed to adequately enable lifetime income options in DC plans is a workable safe harbor for annuity carrier selection. Such a safe harbor would enable plan sponsors to have a feature in the plan that will turn a portion of the savings into guaranteed lifetime income. By including income annuities in their plans, employers can play an important role in helping to ensure successful retirement outcomes for their employees.

Treasury Department revenue rulings and rules proposed and completed between 2012 and 2015, as well as sub-regulatory guidance from the DOL in a 2015 Field Assistance Bulletin7 (FAB), have clearly resulted in increased plan sponsor awareness about the importance of lifetime income options in DC plans. Nearly all respondents (94%) report they are at least somewhat knowledgeable overall about the focus by the DOL and Treasury over the last several years on strengthening Americans’ retirement security through lifelong income solutions. Nearly four in ten plan sponsors (38%) familiar with

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5 MetLife Lifetime Income Poll, 2016
7 Field Assistance Bulletin (FAB), published on July 13, 2015. FAB 2015-02, Selection and Monitoring under the Annuity Selection Safe Harbor Regulation for Defined Contribution Plans, was designed to address “concerns about liability by clarifying that an employer’s fiduciary duty to monitor an insurer’s solvency generally ends when the plan no longer offers the annuity as a distribution option, not when the insurer finishes making all promised payments.”
FAB 2015-02 on the selection and monitoring of annuities in DC plans say that the FAB is having some or a significant impact on their interest in offering income annuities to plan participants.8

However, increased interest and awareness must be met with a workable safe harbor in order to bear fruit.

As we testified before the ERISA Advisory Council (EAC) in 2012, and as the EAC subsequently recommended to the DOL, the main problem with the current guidance on provider selection is the complexity of the provision on assessing carrier financial strength and the related uncertainty over fiduciary protection. We, together with others, have advocated since then for the need to restructure the carrier selection safe harbor to permit reliance on state insurance regulators for financial strength assessments and focusing on selection process requirements.

We believe that a workable safe harbor for annuity carrier selection is a regulatory necessity, and will be a foundational element in enabling these options for DC plan participants. The focus is narrow, and a path to addressing it has had considerable development. Development has been primarily focused on the condition in the existing regulations relating to evaluating the long-term solvency – the ability to make all future payments under the annuity contract – of annuity carriers. At a time when traditional rules of thumb about the amount of money retirees can safely withdraw from their savings are being questioned,9 we believe a workable safe harbor would go far in enabling the widespread availability of income annuities in DC plans.

Plan Sponsors Agree: Nine in ten plan sponsors (92%) agree that it is important for the DOL to provide a workable safe harbor for annuity carrier selection criteria for individual account qualified plans in order to make it easier for plan sponsors to include income annuities in their DC plans. For 70% of plan sponsors, a safe harbor is “extremely” or “very important.” This percentage rises to 96% among those who say they are at least somewhat familiar with proposed amendments to the annuity safe harbor carrier solvency determination requirement. More than a third of plan sponsors (37%) agree that solvency determination is the most pressing issue that still needs to be addressed to ensure a workable safe harbor.10

In October 2013, the American Council of Life Insurers (ACLI) proposed11 that the fiduciary be allowed to rely on a certification by its chosen carrier that it has met a set of defined standards with respect to state insurance commissioner review. Among those standards is a requirement that the: “The [insurance] carrier would have to be licensed in

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10 Half of plan sponsors (50%) are at least somewhat familiar with proposed amendments to the annuity safe harbor carrier solvency determination requirement, “primarily focused on the condition of the safe harbor relating to the ability of the annuity provider to make all future payments under the annuity contract.”, MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll
11 ACLI, 2013. Of interest, this proposal was covered in Plan Sponsor magazine at the time the proposal was introduced, in a story entitled “Fixing DC Annuities: There’s a Proposal on the Table.”
26 or more states, to prevent ‘forum shopping.’ [The insurer] would have to have a clean certificate of authority from its home insurance commissioner, audited financial statements and reserves that satisfy the requirements of all states where it does business; also, [the insurer] could not have operated under an order of supervision, rehabilitation or liquidation. In addition, the [insurance] carrier would have to undergo a financial examination by the insurance commissioner of the domiciliary state at least every five years.”

Three-quarters (76%) of respondents say that in determining the adequacy of the solvency of a potential annuity provider for their DC plan, they would prefer to be permitted to rely on certifications from the annuity provider based on the regulatory process carried out by a state insurance commissioner. This is preferable to plan sponsors than conducting the solvency due diligence process themselves as part of their regular due diligence process.

Although fewer than one in ten plan sponsors say their 401(k) plan includes a guaranteed lifetime income option, nearly two-thirds (66%) of plan sponsors whose plans do not currently include such an option say that they would be at least somewhat likely to make income annuities available to their DC plan participants when the DOL completes work on an updated safe harbor rule for the selection of an annuity provider.

**Broad Recognition and Bi-partisan Support:** Further supporting this proposed approach, the U.S. Government Accountability Office (GAO) released a report in September 2016 in which, among other things, it recommended that steps be taken to improve retirement income options for DC plan participants. Of its seven specific recommendations, two were focused on the safe harbor problem. The first called for clarification of the safe harbor from liability for selecting an annuity provider by providing sufficiently detailed criteria to better enable plan sponsors to comply with the safe harbor requirements related to assessing a provider’s long-term solvency. The second suggested consideration of legal relief for plan fiduciaries offering an appropriate mix of annuity and withdrawal options, upon adequately informing participants about the options, before participants make their investment choices. Legislation that supports these recommendations was included in the Senate Finance Committee passed RESA package in 2016, as well as Reps. Ron Kind and Dave Reichert’s 2015 SAVE Act, H.R. 4067, also introduced in previous Congresses.

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12 ACII, 2013.
14 Ibid
15 The GAO, which undertook the project at the request of Senator Elizabeth Warren (D-MA), surveyed 11 record keepers, 54 plan sponsors, and a “range of stakeholders.”
16 We note that, following ERISA Advisory Council recommendations (2012) and completion of an NAIC project to assist DOL with understanding the state insurance regulatory regime requirements (2013), DOL established a Regulatory Priority project in 2014 to consider proposed amendments to the safe harbor’s carrier solvency determination requirement, “primarily focused on the condition to the safe harbor relating to the ability of the annuity provider to make all future payments under the annuity contract.” This project currently has not been given a target time frame, as work on the Fiduciary Rule delayed its progress.
We have clearly seen from plan sponsor behavior the existing guidance is not sufficient to enable – or encourage – offerings of guaranteed lifetime income products. Legislative and/or expeditious regulatory action could provide the certainty employers need to consider adding income annuity features to the DC plans they sponsor by providing a safe harbor that would permit plan fiduciaries – solely for purposes of determining the financial ability of an insurer to satisfy its contractual obligations – to rely on the fact that the insurer is licensed and in compliance with certain state insurance solvency standards. This is also needed to create a level playing field for sponsor fiduciary responsibility for annuity-based and non-annuity based income solutions.

**Importance of Open Multiple Employer Plans (MEPs)**

As indicated in the introduction of this statement, expanding access to those working for small employers that do not yet offer plans, and enabling incentives for the 22 million Americans who describe themselves as self-employed, sole proprietors or independent contractors, is a very important part of the retirement security landscape that requires thoughtful attention. MetLife joins the voices of many others who have concluded that open MEP solutions offer the most practical promise to address these remaining access gaps.

Currently, it is estimated that one-third of private sector workers are employed by small businesses and more than half of these employers do not offer a retirement plan, which translates into millions of workers without access to an employer-sponsored plan. Although a number of retirement plan options are available to small employers, many small employers are reluctant to offer plans to their employees because of concerns regarding potential fiduciary liability, as well as administrative complexity, burdens and costs. This is particularly true if the businesses are new or don’t yet have predictable profits. Small employers often do not have the time to obtain the education and third-party resources needed to establish a plan.

The DOL and Congress would like to make it easier for multiple small business employers to get together and offer Open MEPS, which would offer them the opportunity to share administrative costs and to reduce the compliance burdens many companies face with offering a DC plan. This platform offers greater economies of scale and the potential to be a low-cost, high-quality option for small businesses. While related employers can set up these arrangements today, current law does not permit unrelated small employers to take advantage of these administrative efficiencies. Allowing for an Open MEP concept that removes some of the regulatory obstacles while still allowing for the robust consumer protections embedded in ERISA would alleviate many of the small business concerns that have created the current retirement plan access gap for their employees. Accordingly, MetLife supports the comments of others in advancing Open MEPS as well.

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18 Ibid. at 9-10.
as legislative efforts to create the solution including, most recently, Reps. Vern Buchanan and Ron Kind’s Retirement Security for American Workers Act, H.R. 854, and the Senate’s RESA package.

We note that, just as access alone has not been sufficient to provide financial security in retirement among DC plans, lifetime income disclosure and a workable safe harbor for annuity selection will also benefit those with expanded access afforded by Open MEPS as their savings process advances.

Conclusion

For more than a decade, those influential in the institutional retirement community, MetLife among them, have called for defined contribution plans to be reframed. No longer can DC plans exist purely for participants to accumulate a pool of assets for retirement, only to leave these individuals – largely on their own – with the responsibility of spending down those assets and trying to manage market, investment and longevity risks. We believe the core purpose of today’s DC plans must be recast from retirement savings to retirement income, enabling plan sponsors to provide the education, tools and solutions to help participants make their savings last a lifetime.

In order for this to be achieved, a call to action is in order. Over the past several years, public policymakers have made enormous strides to strengthen retirement security for millions of U.S. workers – strides that are proving to be seminal to the role that DC plans will play in the future provision of lifetime income. However, there is still more regulatory work to be done. Plan sponsors are signaling that they are ready to reframe their DC plans as retirement income plans, including communicating retirement account balances in lifetime income terms and providing solutions to ensure successful retirement outcomes. This makes it especially timely for the infrastructure supporting the retirement income/distribution phase of DC plans to become as complete as the infrastructure that supports the accumulation phase.

We believe these comments offer a framework for a common understanding of the path forward for the retirement industry. The future of millions of DC plan participants is depending on it.
May 18, 2017

The Honorable Tim Walberg
Chairman
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

Re: Regulatory Barriers Facing Workers and Families Saving for Retirement

Dear Chairman Walberg and Ranking Member Sablan:

The Save Our Savings Coalition, an alliance of advocates and businesses dedicated to protecting Americans’ retirement savings as Congress undertakes tax reform, thanks the Committee for its attention to the issue of retirement security. Our priority is ensuring Americans will continue to have access to the private sector retirement system and to meaningful savings incentives, two items critical to retirement security in this country.

Millions of Americans are covered by the private sector retirement system, which makes it an integral building block of retirement savings. Seventy-five percent of private sector workers are offered a retirement plan at work and 82% of those workers who are offered a plan choose to participate.1 And employers play a vital role in helping their workers save for retirement, with 88% of defined contribution participants belonging to plans with employer contributions2. The private sector system is working to help Americans save.

The existing private sector retirement system benefits everyone, especially middle class families. Eighty percent of participants in workplace defined contribution plans earn less than $100,000 annually3. Access to a private sector retirement plans is a key step toward building retirement security for workers earning $30,000 to $50,000: when an employer-sponsored plan is offered, 70% of workers in that bracket participate, but when no workplace plan is offered, only 5% of those workers will contribute on their own to an IRA4.

4 Based on unpublished estimates by the Employee Benefits Research Institute.
We hope the committee will take steps to help preserve, enhance, and expand the system that’s helping millions of hardworking Americans save for retirement. Thank you again for your attention to this issue, and we look forward to a positive working relationship. If you or your staff have further questions, please contact info@saveoursavings.org.

Sincerely,

The Save Our Savings Coalition
Congressman Pete Sessions (TX-32)  
Statement for the Record  
House Committee on Education and Workforce, Subcommittee on Health, Employment, Labor, and Pensions  
Hearing on: “Regulatory Barriers Facing Workers and Families Saving for Retirement”  
May 18, 2017

Dear Chairman, Ranking Member and Members of the Committee, thank you for holding this important hearing. I appreciate the opportunity to submit this statement for the hearing record. I am very aware of how regulatory burdens, or more specifically regulatory inefficiencies, have a direct impact on the decline of many pension plans in the multiemployer pension plan system. For this reason, I introduced The Multiemployer Pension Plan Partnership Act (H.R. 2117) to help address multiemployer pension regulatory burdens. H.R. 2117 would provide a multiemployer pension plan, along with its unions and contributing employers, the ability to devise a customized strategy suitable for that plan that would allow employers to continue contributing for as long as the plan continues to have plan assets, without incurring additional liability.

My legislation would encourage stakeholders to devise a strategy unique to their plan with the goal of providing incentives to retain current employers, and possibly even attract new contributing employers. Moreover, H.R. 2117 is merely an extension of existing law, specifically ERISA § 4224. Under current law, multiemployer pension plans can adopt alternative rules providing other terms and conditions for the satisfaction of withdrawal liability consistent with ERISA and PBGC regulations. Unfortunately, the existing statute is vague as to what types of rules would be consistent with ERISA, and PBGC has never issued any regulations or other guidance. And in the limited circumstances where plans have approached PBGC with alternative rules, PBGC has been slow to act, if it acts at all. Often times providing no response, or when it finally does respond, the requesting plan has already lost too many contributing employers to remain viable. H.R. 2117 provides additional substance to § 4224, defines which plans are eligible to take advantage of this section, and the criteria they must satisfy in order for PBGC to approve such a rule. This bill also establishes a time limit of 90 days in which PBGC must act, not counting any period in which PBGC is waiting for additional information from the plan.

It is important to recognize that much, if not most, of what could be accomplished under H.R. 2117 could be accomplished under existing law if PBGC simply provided guidance to plans and employers on what actions PBGC would find consistent with ERISA, and acceptable for multiemployer pension plans to adopt, in order to provide incentives for contributing employers to remain contributors the plans. For example, any strategy that would reduce an employer’s withdrawal liability over time in exchange for the employer’s long-term commitment to continue contributions to the plan should be acceptable to PBGC so long as it extends the solvency of the plan and delays the date upon which the plan will need PBGC financial assistance to pay benefits. Where withdrawal liability payments are for a set amount, and a finite period of time, contributions from active employers may increase as work increases, and may also include
reasonable rate increases. In short, PBGC should provide an acceptable road map, but then step aside to allow the interested parties to craft their own solution, stepping in only when PBGC finds potential abuse. This should be a seldom occurrence if all parties are represented at the table, which they would be if the plan, union, and employers could craft their own solution.

As the Committee is well aware, the most pressing obstacle facing many multiemployer pension plans is the decline in contributing employers. Though much of this decline is simply due to disappearing industries and reductions in union membership, an equal part of the problem is withdrawal liability. Many union employers with a long history of contributing to multiemployer pension plans have recently withdrawn from these plans, or will do so in the near future. The simple reality is that as the multiemployer plan system declines, an employer’s potential withdrawal liability increases. As unpleasant as it may be to incur withdrawal liability, many employers are now making the decision to withdraw and pay withdrawal liability today, rather than wait for the liability to become greater in the future. The current system is set up to almost force employers with the ability to withdraw to do so as soon as possible, or risk being one of the last employers standing when liability can become triple or more of what it is today. Without contributing employers, multiemployer pension plans will inevitably fail. And withdrawal liability has never been a sufficient replacement for ongoing contributions because it is finite, and is often never paid because the assessment of the liability often leads to employer bankruptcies or other insolvency proceedings. But this result does not have to be inevitable.

In summary, although the recent hearing did not involve multiemployer pension plans, there are many parallels to the regulatory burdens on the creation of creative pension vehicles, and the issues facing multiemployer pension plans. Thank you for allowing me to share my perspective and I look forward to supporting the Subcommittee in these important efforts.
MAY 18, 2017

The Honorable Tim Walberg  The Honorable Gregorio Kilili Camacho Sablan
Chairman Ranking Member
HELP Subcommittee HELP Subcommittee
House Committee on Education House Committee on Education
and the Workforce and the Workforce

Dear Chairman Walberg and Ranking Member Sablan:

On behalf of the SPARK Institute, Inc., I want to thank you for holding today’s important hearing to discuss the regulatory barriers facing workers and families saving for retirement.

The SPARK Institute believes that retirement security is the shared responsibility of individuals, employers, government, and the providers, consultants, and advisors who serve them. We represent the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third-party administrators, trade clearing firms and benefits consultants. Collectively, our members serve approximately 85 million employer-sponsored plan participants.

SPARK has already written to Labor Secretary Alexander Acosta encouraging the Department of Labor to work on the following items which are central to SPARK’s regulatory and legislative agenda. These matters have been identified by our members as key areas for improving our private retirement system.

- **Fiduciary Rule.** SPARK supports the Fiduciary Rule’s goal of ensuring that fiduciaries are subject to a “best interest” standard when providing investment advice with respect to employee benefit plans and IRAs. However, we are also concerned with some of the ways in which the Fiduciary Rule will adversely affect the ability of Americans to gain access to retirement information and financial advice. Accordingly, SPARK believes that DOL should further delay the Fiduciary Rule’s upcoming applicability date in order to complete its presidially ordered review of the rule. Such a delay would prevent the Fiduciary Rule from creating negative unintended consequences for retirement savers and retirement plan sponsors before DOL has an opportunity to consider needed changes.

- **Electronic Delivery of Disclosures.** SPARK believes that the default delivery method for retirement plan related documents should be electronic delivery. Electronic delivery empowers retirement plan participants by providing them access to real-time information about their retirement benefits and other online tools that can assist with retirement planning. However, existing DOL regulations do not allow retirement plan providers to use technology to improve their communications with retirement savers. DOL has the authority to make electronic delivery the default delivery method through regulation, while preserving the ability of savers to receive paper if so desired, and SPARK strongly encourages DOL to exercise its authority to do so. SPARK also strongly supports the RETIRE Act (H.R. 2656 in the 114th) introduced by Committee members Rep. Jared Polis and Rep. Phil Roe that would also make these sensible modernizations.
• **Facilitate Coverage Through Open MEPs.** SPARK believes that DOL should make it easier – not harder – for small employers to offer retirement plans. We believe that open multiple employer plans ("MEPs") would help expand retirement plan coverage, especially for small businesses, because of the reduced costs and economies of scale that would be made possible by open MEPs. However, existing DOL guidance has limited the ability of unrelated employers to pool together to offer their employees access to retirement plans at an affordable cost. Accordingly, we urge DOL to reconsider its previous guidance to allow unrelated employers to participate in a MEP. SPARK strongly supports the Retirement Security for American Workers Act (H.R. 854) to allow unrelated employers to join together to offer multiple employer plans (MEPs) and resolve the “one bad apple” rule.

• **Support for Lifetime Income Options.** SPARK believes that retirees deserve access to guaranteed lifetime income options. SPARK supports measures to address portability issues that impede lifetime income investments and an improved fiduciary safe harbor for plan sponsors when selecting an annuity provider. We encourage DOL to consider ways to make it easier for all retirement savers to access lifetime income options.

• **Simplify and Streamline Annual Reporting.** SPARK appreciates the important role that the Form 5500, ERISA’s annual reporting form, plays in DOL’s enforcement, research, and policy formulation programs. DOL can take steps to simplify and streamline the Form 5500 in a way that benefits all private retirement system stakeholders and SPARK encourages DOL to do so as it approaches the next update of the Form 5500 filing system.

• **Auto-Enrollment and Auto-escalation Features.** Since the Pension Protection Act of 2006, auto-enrollment and auto-escalation have been critical tools in helping to overcome the problem of inertia as it relates to employees participating in retirement plans and increasing contributions over time. SPARK believes that auto-features are a true success and retirement policy makers should continue to build on that success. SPARK encourages DOL to continue its support for expanded use of auto-features.

We greatly appreciate your interest in these important retirement security issues and look forward to working together to ensure all Americans are able to achieve a financially secure retirement.

Sincerely,

Tim Rouse  
Executive Director  
The SPARK Institute, Inc.
June 4, 2015

The Honorable Mike Kelly
1519 Longworth House Office Building
Washington, DC 20515

The Honorable Ron Kind
1502 Longworth House Office Building
Washington, DC 20515

The Honorable Jared Polis
1433 Longworth House Office Building
Washington, DC 20515

The Honorable Phil Roe
407 Cannon House Office Building
Washington, DC 20515

Dear Representatives Kelly, Kind, Polis and Roe:

The SPARK Institute thanks you for your leadership towards modernizing retirement plan disclosures. Our members have long believed that it is time to improve the way that we provide employees with information about their retirement benefits by making it easier for employers to communicate with employees electronically. Americans have embraced greater use of technology for retirement plan communication, as they have for almost every other area of their daily lives.

Allowing electronic delivery to be the default method, while preserving an employee’s right to receive paper, would have enormous benefits. A comprehensive study by Quantria Strategies that we are releasing estimates there will be $200 to $500 million in aggregate savings annually that would accrue directly to individual retirement plan participants. This means, quite simply, more resources for Americans in retirement. And a survey by Greenwald & Associates reported in the study makes clear that Americans support making electronic delivery the default, so long as those that prefer paper can always receive paper.

This is why the SPARK Institute is proud to support the “Receiving Electronic Statement to Improve Retiree Earnings Act.” This bill would consolidate a number of inconsistent regulatory rules for electronic delivery of information, and allow an employer to furnish required disclosures electronically, while ensuring an employee (or retiree) can always request paper at no additional direct cost. Your bill strikes the right balance and we applaud introduction of the bill.

Thank you again for introducing this legislation and we look forward to continuing to work with you on this important issue. If you have any questions, please contact Michael Hadley, the SPARK Institute’s outside counsel (mhadley@delvis-harman.com, 202-347-2230).

Sincerely,

Joseph Ready
President, The SPARK Institute, Inc.
Chairman WALBERG. It is now my pleasure to introduce our distinguished panel of witnesses. Mr. James Kais is the Senior Vice President and National Retirement Practice Leader at Transamerica. He leads the firm's sales, strategy, and client development effort in the MEP Taft Hartley/Davis Bacon prevailing wage and infinity markets. Welcome.

Mr. Erik Sossa is Vice President of Global Benefits & Wellness at PepsiCo, Inc. He is responsible for the design, administration, and compliance of PepsiCo's benefits programs around the world. Welcome.

Dr. Jason Furman is a Senior Fellow with the Peterson Institute for International Economics. Previously, he was a top economic advisor to President Obama, serving as the 28th chair of the Council of Economic Advisors. Welcome.

The Honorable Bradford Campbell is a partner at Drinker Biddle & Reath. From 2007 through 2009, he served as Assistant Secretary of Labor for the Employee Benefits Security Administration. Welcome.

I will now ask our witnesses to raise your right hand.

[Witnesses sworn.]

Chairman WALBERG. Let the record reflect the witnesses answered all in the affirmative.

Before I recognize you to provide your testimony, let me just briefly explain our lighting system, which is not difficult to explain. Traffic light there. When it is green, you have five minutes of testimony. When it hits yellow, do not slide to a stop but start considering it, you have one minute left. When the red hits, try to finish your key thought as quickly as possible. I am sure a lot of what you would have said would be asked of you in questioning as well. We will ask our colleagues here as well to follow that same requirement in the five minutes of questioning.

Now, let me recognize Mr. Kais for his opening statement.

TESTIMONY OF JAMES KAIS, SENIOR VICE PRESIDENT AND NATIONAL RETIREMENT PRACTICE LEADER, TRANSAMERICA

Mr. Kais. Thank you. I'm Jim Kais, Transamerica Senior Vice President and Managing Director of our Retirement Practice. Transamerica is focused on helping customers achieve a lifetime of financial security. Of the 28,000 retirement plans we serve today, 306 are MEPs, which have been adopted by over 12,000 employers, many of them small businesses, including 770,000 participants.

According to the Small Business Administration, the number of small businesses in the U.S. has increased 49 percent since 1982. Small businesses represent 99.9 percent of the total firms and 48 percent of the private sector workforce.

In addition, research from non-profit Transamerica Center for Retirement Studies in 2016 shows that 89 percent of workers who are offered a 401(k) or similar arrangement for retirement compared to just 47 percent of workers are not offered such a plan.

Therefore, expanding retirement plan coverage amongst small businesses is critical to enhancing America's retirement security.

My testimony will focus on three main points. Number one, we need to encourage small employers to provide plans through reforms that address the primary reasons that employers do not offer
plans, which are costs, complexity, and concern about fiduciary liability.

Under a multiple employer plan, many small businesses can join together to achieve economies of scale and avoid the administrative burden and liability of running the plan.

Adopting employers delegate fiduciary and administrative services, such as the selection of the investment menu lined up for the plan, and share in the cost of the services.

MEPs are a great way to provide coverage. 2016 research found that 22 percent of companies that do not offer a 401(k) or similar plan and are not likely to offer one in the next two years would be likely to consider joining an MEP, or multiple employer plan.

In order to facilitate the adoption of a MEP, Transamerica actively supports two essential reforms. First, compliant employers in an MEP should be protected from liability for a non-compliant act or omissions of other employers in the MEP, and resulting disqualification of the entire plan, the so-called “one bad apple rule.”

Second, the requirement that only employers with a nexus can join in a multiple employer plan should be eliminated. Permitting open MEPs will increase the number of small employers to provide a retirement plan for their employees.

These reforms have long been advocated by both Republican and Democratic members in the House of Congress. In addition, the House Republican Task Force on Poverty, Opportunity, and Upward Mobility also called for open MEPs in its blueprint.

Number two, Transamerica has consistently supported the spirit of the fiduciary rule that financial professionals adhere to the best interest standard when providing investment advice.

Transamerica strongly supported the Roe-Neal and Roskam-Neal fiduciary bills that were passed last year by this Committee and by the Ways and Means Committee, which established a workable best interest standard.

Transamerica also has steadfastly maintained that the DOL fiduciary rule is not workable in its current form. The fiduciary rule must be delayed beyond the upcoming June 9 date to give the DOL sufficient time to review the current rule and is impact on retirement savings without further disruption to the market and harm to individuals.

In addition, DOL must work with the Securities and Exchange Commission and the states in implementing a harmonized, manageable, and well defined best interest standard across product lines and distribution channels.

Without significant reform, the fiduciary rule has and will likely to continue to negatively impact access to investment advice primarily by those less affluent customers who need it the most.

In 2016, Transamerica’s sale of annuities, a product that helps individuals manage their retirement savings to last a lifetime, fell by approximately 50 percent from the previous year. This figure translates to 35,000 fewer Americans who are not counseled to consider them a solution that would provide them with guaranteed income in their retirement.

The fiduciary rule also significantly impacts small employers who seek advice from financial professionals on establishing and main-
taining a workforce retirement plan that is tailored to the workforce.

Due to the onerous nature of the fiduciary rule’s documentation requirements, limitation on advice given with respect to plan investment options and exposure to class action liability, many professionals specializing in the small employer market have indicated they are limiting or discontinuing their services in this area.

Number three, in addition to the points above, more can and should be done to encourage employers of all sizes to adopt plans and increase worker participation, as well as the ability to manage their savings to last a lifetime.

Congress is encouraged to enact widely supported bipartisan proposals from the bill unanimously approved last year by the Senate Finance Committee, including open MEPs, to increase coverage by encouraging and facilitating the establishment of workplace retirement plans and the participation by employees in those firms.

Transamerica commends Chair Walberg, Ranking Member Sablan, and other members of the subcommittee on their consideration of the important issue of multiple employer plans and employer plan coverage in general.

We appreciate the opportunity to present our views on the particular challenges faced by small businesses in offering plans and our suggested approach to solutions. Thank you.

[The statement of Mr. Kais follows:]
Statement of
James M. Kais
Senior Vice President and Managing Director, Retirement Practice, Transamerica

Presented to
The U.S. House Education and the Workforce Committee
Subcommittee on Health, Employment, Labor and Pensions

Hearing on
Regulatory Barriers Facing Workers and Families Saving for Retirement

May 18, 2017

Transamerica appreciates the opportunity to provide this written testimony in connection with today’s Hearing examining Regulatory Barriers Facing Workers and Families Saving for Retirement that is held by the U.S. House Education and the Workforce Committee Subcommittee on Health, Employment, Labor and Pensions examining open multiple employer plans (“MEPs”). This testimony will discuss the role of small business in helping employees save for retirement, challenges they face and recommendations for further reform.

Transamerica is focused on helping customers achieve a lifetime of financial security. Transamerica products and services help people protect against financial risk, build financial security and create successful retirements. Transamerica designs customized retirement plan solutions for both for profit and non-profit businesses nationwide. Transamerica provides services for over 28,000 plans that collectively include over 5 million participants and represent over $245 billion in plan assets as of December 31, 2016. Multiple employer plans comprise 306 of these plans adopted by over 12,400 employers with 770,000 participants and $21.9 billion in assets.

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

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

1. As the number of small businesses continue to grow and become a large source of new jobs, expanding retirement plan coverage among small businesses is critical to enhancing Americans’ retirement security. We need to encourage small employers to provide plans through reforms that address the primary reasons that employers, especially small employers, do not offer plans: cost, complexity, and concern about fiduciary liability. In this regard, we encourage both removal of restrictions to employers entering into multiple employer plans and limitations on liability of participating employers in a multiple employer plan from the wrongful acts of another participating employer. We also encourage further reform to improve the efficiency of pooled arrangements.
2. Employers play a vital role in helping their employees in their retirement planning preparedness by offering retirement savings plans, improving plans, and enhancing benefits through innovations designed to help their employees. We need to be mindful that the employer plan system is voluntary and preserve a central role for employers in the private retirement system. Any reforms to or innovation in helping workers save for retirement should enhance and not disrupt the efficiencies and effectiveness of the current system.

3. The Department of Labor (“DOL”) Rule on Conflicts of Interest (the “DOL Fiduciary Rule”) poses a major impediment to small employers interested in establishing a plan for their employees. The DOL Fiduciary Rule restricts small employer access to advice needed in establishing and maintaining plans, as well as increases the cost of these plans. We have encouraged the DOL to consider these points as part of its review of the DOL Fiduciary Rule pursuant to the February 3, 2017 Executive Order.

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

Small business facts and employers’ role in helping workers save for retirement. According to the U.S. Small Business Administration, the number of small businesses in the United States has increased 49 percent since 1982. Since 1990, as big business eliminated 4 million jobs, small businesses added 8 million new jobs. Small businesses (fewer than 500 employees) represent 99.9 percent of the total firms and 48 percent of the private sector workforce in the United States. Therefore, expanding retirement plan coverage among small businesses is critical to enhancing Americans’ retirement security.

Employers play a vital role in helping workers save for retirement. The workplace retirement savings system has succeeded in serving as the preferred method of saving for retirement for millions of workers. With the benefits of saving in an employer-sponsored plan governed by the Employee Retirement Income Security Act, as amended (“ERISA”) (e.g., investment education, the potential for employer contributions, and fiduciary oversight), combined with the convenience of automatic payroll deduction, Americans are far more likely to save for retirement through participating in a company-sponsored retirement plan than through alternate savings structures. According to research from nonprofit Transamerica Center for Retirement Studies® (TCRS), 89 percent of workers who are offered a 401(k) or similar plan are saving for retirement, either through the plan and/or outside of work, compared to just 47 percent of workers are not offered such a plan.

Multiple Employer Plans are a powerful solution to increasing coverage in the small employer market; however, further reform is needed to facilitate their adoption. As small businesses continue to employ a greater portion of workers than ever before, focus should be placed on obstacles to employers establishing retirement plans for their workers. Common reasons employers cite for not offering retirement savings plans to their employees are:

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2. Transamerica Center for Retirement Studies® (TCRS), 16th Annual Retirement Survey of American workers. TCRS is a division of Transamerica Institute® (“The Institute”) a nonprofit, private foundation. The Institute is funded by contributions from Transamerica Life Insurance Company and its affiliates may receive funds from unaffiliated third parties. For full survey methodologies, see [www.transamericacenters.org](http://www.transamericacenters.org)
cost, complexity, and fiduciary liability. Under a multiple employer plan ("MEP"), many small businesses can join together to achieve economies of scale and avoid the administrative burden and liability in running the plan by turning over administration of the plan to a named plan fiduciary, recordkeeper and plan administrator, making the plan both more affordable and effectively managed. By joining a MEP, adopting employers delegate fiduciary and administrative services, such as the selection of the investment fund lineup for the plan, and share in the costs of such services. TCRS' research found that 22 percent of companies that do not offer a 401(k) or similar plan and are not likely to offer one in the next two years would be likely to consider joining a MEP.1

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

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

The above reforms have long been advocated by both Republican and Democrat Members in both Houses of Congress, including in bills sponsored by Representatives Buchanan, Reichert, Neal and Kind in the House and by Senators Hatch, Collins, and Nelson in the Senate. The House Republican Task Force on Poverty, Opportunity, and Upward Mobility also called for Open MEPS in its blueprint "for reforming our welfare, workforce, and education programs that will empower Americans to achieve the American Dream."

Although the specifics of the MEP legislation vary slightly, there is substantial common ground and all have gained bi-partisan support. In addition, last fall the Senate Finance Committee had approved in a 26-0 vote the Retirement Enhancement Savings Act ("RESA") containing provisions to permit Open MEPS and to address the one bad apple rule. Representatives Buchanan, Renacci, Neal, and Kind reintroduced their bill this year (H.R. 854) with the same MEP provisions as that contained in RESA.

**Facilitate other efficiencies in pooled arrangements.** Employers that want to retain their own stand-alone 401(k) plan but wish to address the cost, liability and administrative complexity concerns, may adopt a plan that shares with other employer plans a common trustee, a common named fiduciary, a common plan administrator, a common set of investment options, and a common record-keeper. Further efficiencies can be gained in these pooled arrangements by permitting the administrator of plans sharing this same administrative framework to file a consolidated Form 5500. The consolidated Form 5500 may contain such information about the separate plans as is necessary or appropriate to ensure that DOL and Treasury do not fail to

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1 Source: Transamerica Center for Retirement Studies®16th Annual Retirement Survey.
receive needed information. In short, a combined Form 5500 would eliminate the wasteful duplication that occurs today but without giving up any valuable information. This year, these Form 5500 changes were proposed in legislation (H.R. 1688) co-sponsored by Representatives Sanchez and Roe; this same bill was also included in RESA after having been introduced by Senators Collins and Warner.

**State Open MEP Plans.**

It should be noted that last year the DOL issued guidance to States that effectively allowed States to establish MEPs for residents without regard to the established commonality requirement. While we support innovation in providing workers the ability to save, such innovations should complement the current employer-based system and not unfairly compete with it. Any competition with the current employer-based system on an unlevel playing field is very counterproductive, as it will inhibit private plan growth and innovation. The DOL guidance to States permitting States to establish MEPs for resident small businesses not meeting the established definition of commonality to which private run MEPs are subject does result in unfair competition. This guidance was not part of the regulation that was rescinded in the Congressional Review Act vote on State plans which was passed by Congress earlier this month. The Transamerica urges this Congress and DOL to ensure that private sector open MEPs can be offered to private sector workers on the same terms as State or other governmental open MEP plans.

**DOL Fiduciary Rule**

Transamerica has consistently supported the spirit of the Fiduciary Rule that financial professionals adhere to a best interest standard when providing investment advice. For example, Transamerica strongly supported the fiduciary bills that were passed last year by this Committee and by the Ways and Means Committee, which established a workable best interest standard.

Transamerica has also steadfastly maintained that the Fiduciary Rule is not workable in its current form and will result in fewer opportunities for Americans to access investment advice in saving for a secure retirement. To fully ensure that financial professionals providing investment advice act in the best interest of their customers without limiting access to investment advice by those who need it most, the Fiduciary Rule must be significantly reformed and DOL must work with the Securities & Exchange Commission and the States in implementing a harmonized, manageable, well-defined best interest standard across product lines and distribution channels.

The Fiduciary Rule must be delayed beyond the upcoming June 9th date to give the DOL sufficient time to review the current rule and its impact on retirement savings without further disruption to the market and harm to individuals. Transamerica welcomes the review of the Rule against the criteria noted in the President’s February 3, 2017 Memorandum.

Transamerica has found that, without significant reform, the Fiduciary Rule has and will likely continue to negatively impact access to investment advice, primarily by those less affluent

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4 We supported the rescission because the state-based IRAs would have undermined the adoption and maintenance of plans subject to ERISA, which provide far greater benefits and protections than the state IRAs. By undermining plans, the state IRAs would thus have undermined retirement security.

5 The original sponsors of the House ERISA bill were Representatives Roe (R-TN), Neal (D-MA), Larson (D-CT), Carter (R-GA), and David Scott (D-GA). The tax bill was introduced originally by Representatives Roskam (R-IL), Neal, Roe, Larson, Reed (R-NY), and Lujan Grisham (D-NM).
customers who need it most. In 2016, Transamerica sales of annuities—a product that helps individuals manage their retirement savings to last their lifetime—fell by approximately 50% from the previous year. This figure translates to 35,000 fewer Americans who were not counseled to consider a solution that would provide them with guaranteed income in their retirement.

The Fiduciary Rule will also significantly impact small employers who seek advice from financial professionals in establishing and maintaining a workforce retirement plan that is tailored to the workforce. Due to the onerous nature of the Fiduciary Rule’s documentation requirements, limitation on advice given with respect to plan investment options, and exposure to class action liability, many financial professionals specializing in the small employer market have indicated that they are limiting or discontinuing their services in this area.

Even when small employers are able to establish a workforce retirement plan, the Fiduciary Rule has a direct impact on the information plan participants can obtain in making their contribution decisions. Given the Fiduciary Rule’s narrow and ambiguous definition of “education” vs. investment advice, call centers for such plans are becoming more scripted to avoid inadvertently tripping a fiduciary relationship between the call center representative and the plan participant. For example, when seeking a plan loan, distribution for a hardship or lump sum distribution upon termination of employment, call centers are now reluctant to counsel a plan participant about options that may be better suited for the plan participant and do not result in leakage and decreased savings.

**Enact reforms that increase coverage of workplace retirement plans.**

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

There is no silver bullet to the coverage problem. Much work has been done since the Pension Protection Act was enacted in 2006 to increase coverage by encouraging and facilitating the establishment of workplace retirement plans and the participation by employees in those plans. Congress is encouraged to enact reforms, many of which are included in the RESA package referenced earlier in this Testimony that have received wide bi-partisan support. In addition to those referenced earlier, these reforms include:

- Encouraging increased automatic enrollment and automatic escalation through enhanced safe harbor designs;
- Increased credits for small businesses to adopt plans or to adopt automatic enrollment features;
- Expanded ability to communicate with participants electronically, which is more effective and more efficient;
- Promotion of lifetime income options through enhanced portability of in-plan annuity options and through fiduciary safe harbors;
- Increase awareness of savings needs to meet expenses throughout the lifetime by requiring participant benefit statements to add to a participant’s account balance a projection of how much that account balance translates into a guaranteed monthly income from retirement throughout the rest of the participant’s life. 6 Workers can better decide whether to increase their savings, adjust their 401(k) investments, or reconsider their retirement date, if necessary, to assure the quality of life they expect in retirement; and
- Promotion and expansion of the Saver’s Credit.

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

In seeking solutions, we must take care to “do no harm” to the current system and incentives for saving. The current employer plan system is a voluntary one, and as noted above, is successful in providing workers with the ability to save for a secure retirement.

Employers establish and maintain employer retirement savings plans at a considerable cost and administrative burden and with significant concern over liability. Solutions should address these concerns and not add to them. Without the voluntary maintenance of a plan by companies, we are left with far less savings and more pressure on the government to enhance social programs to address the needs of seniors. For this reason, care should be taken to ensure that any new requirements that Congress or the Administration imposes upon open MEPs as part of their approval do not also apply to the current law MEPs (“closed MEPs”) structure. To do so would be to disrupt the closed MEP marketplace.

**Conclusion**

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

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6 See S.3471
Chairman WALBERG. Thank you. I now recognize Mr. Sossa for his five minutes of testimony.

TESTIMONY OF ERIC SOSSA, VICE PRESIDENT, GLOBAL BENEFITS & WELLNESS, PEPSICO, INC., ON BEHALF OF THE ERISA INDUSTRY COMMITTEE

Mr. SOSSA. Good morning, everyone. It’s an honor to testify today. My name is Erik Sossa. I’m Vice President of Global Benefits for PepsiCo, and thank you for your important efforts to reduce regulatory burdens that can adversely impact retirement savings.

I appear on behalf of the ERISA Industry Committee, also known as “ERIC,” so, yes, Erik is testifying on behalf of ERIC.

ERIC is the only national association that advocates exclusively for large employers on employee benefit matters at the federal, state, and local levels. We are unique because we offer the sole perspective of companies providing benefits to tens of millions of workers and families across the country. My company alone covers over 140,000 participants in its retirement plans.

ERIC’s members voluntarily provide benefits and financial wellness programs that are essential for Americans’ retirement security. Our plans offer security retirement savings opportunity, far better than anything employees could find on their own.

We can all agree that retirement savings should be encouraged, and that the resources employers set aside to fund and manage retirement benefits should be used as efficiently and as effectively as possible.

Today, I want to discuss four ways to support these goals and address the unnecessary burdens posed on retirement plans.

First, electronic disclosures. Labor Department rules that hinder electronic communications with plan participants should be modernized. These rules were created 15 years ago. While printing and mailing communications to plan participants made sense in 2002, it should no longer be the default requirement in 2017. It should be an option that participants can choose at any time.

It costs PepsiCo hundreds of thousands of dollars each year to print and mail required disclosures. For some companies, these costs are passed through to plan participants, which can decrease participant savings over time.

Our written testimony proposes a common sense approach that will save employers and employees money, and more importantly, enhance the quality and effectiveness of employee communications.

Second, efforts to locate missing participants. The lack of clear guidance from regulators combined with stepped up enforcement creates confusion and adds needless costs to retirement plans. Employers need clear guidance on reasonable and cost effective measures to find participants who through no fault of the employer cannot be located. Employers need to know when the reasonable effort standard has been met.

Third, preemption. I cannot stress enough the success and importance of ERISA federal preemption. Without it, companies like mine could not provide benefits to families and workers effectively across the country. PepsiCo, like many ERIC members, has employees who live or work in every state. Being governed by a single
Federal law rather than a patchwork or state and local laws is critical.

ERIC supported the congressional resolutions to disapprove Labor Department, state, and local retirement plan regulations. While we support enhancing retirement savings opportunities for all Americans, we were concerned that the state and localities would seek to regulate retirement plans subject to ERISA.

We see it with Oregon which announced imposing requirements on private employer plans. Employers providing benefits and complying with federal law should not face additional obligations imposed by state law. We urge Congress and the Labor Department to ensure that employers’ retirement plans continue to be subject to uniform federal rules and not through a patchwork of state and local requirements.

Finally, we ask for consideration on the impact of new policies on plan sponsors. Given the complexities of ERISA, new regulations or legislation, no matter how well intentioned, pose a risk of unintended and unnecessary costs on employers and plan sponsors that add little to no benefits to participants.

We have a lot of experience administering retirement plans, and we gladly work with policy makers to help solve the intended problems while avoiding needless burdens.

For example, the prior administration had pending litigation intended to encourage the use of annuities or other lifetime income options. The approach mandates that plan sponsors calculate and print onto 401(k) statements how each participant’s retirement plan balance would translate into an annuity.

However, this approach does not take into account that most plans do not offer annuity options, so the information is not meaningful, and confusing to plan participants.

Another example is the fiduciary rule, which leaves plan sponsors uncertain about the exact measures that they must take to monitor recordkeepers of their plans.

I hope these examples illustrate the opportunities that Congress and the new administration have to improve retirement savings and address the regulatory barriers affecting workers and families saving for retirement.

Thank you again for this opportunity. I look forward to answering your questions.

[The testimony of Mr. Sossa follows:]
Statement by

Erik Sossa
Vice President, Global Benefits & Wellness
PepsiCo, Inc.

on behalf of

The ERISA Industry Committee

Prepared for the hearing on

“Regulatory Barriers Facing Workers and Families Saving for Retirement”

before the

Subcommittee on Health, Employment, Labor & Pensions
of the Education and the Workforce Committee
U.S. House of Representatives

May 18, 2017
INTRODUCTION

Chairman Walberg, Ranking Member Sablan, and Members of the Subcommittee, thank you for holding this important hearing. My name is Erik Sossa, and I am Vice President of Global Benefits and Wellness at PepsiCo, Inc. I have over two decades of experience overseeing the design, administration, and compliance activities for retirement, health, and other benefit plans. For the past five years, I have been responsible for design, governance, and compliance for PepsiCo’s retirement and health and wellness plans around the world. Prior to my current role, I have held various roles in benefits and compensation at PepsiCo, Inc. Before coming to PepsiCo, I worked as a consultant serving clients in the areas of retirement and retiree medical programs design and financial management.

I am honored to appear today to discuss retirement security for employees and families on behalf of The ERISA Industry Committee (“ERIC”). ERIC is the only national trade association that advocates exclusively for large employers on employee benefits matters at the Federal, State, and local levels. ERIC advocates for public policies that reduce taxes, mandates, and compliance burdens so that employers can tailor benefits to their unique workforce and provide benefits uniformly to workers and families across the country. ERIC’s membership is limited to large employers that sponsor health and retirement plans, so our comments today are solely from that perspective. ERIC’s overarching concern is that Federal legislation and regulations continue to provide a robust framework that enable employers with operations in many States to be governed under Federal law — under so-called “ERISA preemption.” Today, as requested, I would like to address the importance of removing unnecessary regulatory hurdles so that the resources that employers set aside to provide retirement benefits to their employees can be used as efficiently and effectively as possible.

My testimony today addresses:

• The central role large employers play in the retirement security of millions of Americans and the importance of ERISA preemption;
• Four areas where Congress can take action to support practical solutions that will provide the strongest retirement benefits for employees and their families:
  1. Modernizing and harmonizing rules governing electronic communications with participants in employee benefit plans;
2. Permitting employers to locate so-called “missing” participants using cost-efficient measures and without incurring ongoing costs and increased liabilities for participants who they cannot find despite reasonable efforts;

3. Confirming that employers that sponsor ERISA-governed retirement plans are not also subject to State law regulations or requirements regarding State-mandated retirement plans; and

4. Ensuring that the impact of new regulations or legislation on employer plan sponsors is seriously considered.

LARGE EMPLOYERS PLAY AN ESSENTIAL ROLE IN THE RETIREMENT SECURITY OF MILLIONS OF AMERICANS

ERIC’s members are leaders in advancing Americans’ retirement security and financial wellness and include the largest companies in the country across all sectors of the economy. Employer-sponsored retirement plans cover approximately 90 million active participants.\(^1\) ERIC’s members, alone, provide retirement benefits for tens of millions of Americans. My company, PepsiCo, has eight retirement plans that, combined, cover over 140,000 participants, including a defined benefit plan that remains open to newly-hired hourly-paid workers.

In addition to covering tens of millions of Americans, large employers’ retirement plans offer employees and their beneficiaries superior retirement savings vehicles, especially compared to those that employees or beneficiaries could find on their own. For example, investment options in retirement plans are carefully selected and monitored under a strict, fiduciary standard. These investment options — which often include preferential share classes or fee structures — typically have substantially lower fees than what an individual could obtain on his or her own through an IRA or other individual investment account. In addition, an employer-sponsored plan’s investment options are consistently monitored to ensure that they continue to provide appropriate investment alternatives for the plan’s participants and are replaced when the plans’ fiduciaries conclude that the investment option is no longer appropriate.

The employers that make up ERIC’s membership do not see our role as merely setting up a retirement plan and then letting employees sink or swim on their own. Because ERIC’s members generally are not in the business of providing retirement or other benefits — for example, my company, PepsiCo, is a leading global food and beverage company — we choose to provide retirement benefits to attract and retain employees and because we want them to be able to enjoy a comfortable retirement. As a result, we remain invested in our employees’ retirement security — and their overall financial wellness — from the day they start work until they no longer are entitled to any benefits from our plans. We provide high-quality education to encourage our employees to save smartly. In many cases, we directly contribute to employees’ retirement accounts through matching or other employer contributions. We also seek innovative solutions to help our employees with pressing retirement issues, for example, looking for ways to help employees avoid outliving their retirement savings.

Employers’ successful ability to provide these benefits is directly related to the strength of the Employee Retirement Income Security Act of 1974 (“ERISA”) — the primary statute governing employer-sponsored retirement plans. In enacting ERISA, Congress sought to ensure that benefit commitments were honored — but also to avoid imposing obligations that would discourage employers from adopting or maintaining retirement plans. By establishing that these retirement plans are governed exclusively by federal law, ERISA allows employers to provide uniform benefits and uniform plan administration even if their workforce is scattered over the many State and local jurisdictions. Congress expressly sought to prevent a patchwork of State regulation that would be more costly than a uniform national system and a disincentive for employers to provide retirement benefits.²

**Practical Regulations Enable Employers to Provide the Best Possible Benefits for Their Employees**

Everyone with an interest in retirement plans — employers, employees and their dependents and beneficiaries, Congress, and regulators — can agree that resources set aside for employees’ retirement benefits should be used as efficiently and effectively as possible. While ERIC recognizes the need for rules to prevent abuses and to ensure that benefits are distributed in

a nondiscriminatory manner, Congress should look to eliminate unnecessarily burdensome rules that divert funds from employees’ retirement benefits.

Today, I want to take this opportunity to discuss four examples where Congress can take action to facilitate the efficient and effective delivery of high-quality benefits to millions of employees and their dependents and beneficiaries:

1. **Modernize and Harmonize Rules Governing Electronic Communications with Participants in Employee Benefit Plans**

   Employee benefit plans are currently subject to regulations that hinder electronic communications with their participants. These rules should be modernized, so that paper documents are sent only to people who do not have Internet access or who indicate a preference to receive paper communications in the mail. By eliminating hurdles to sending electronic communications to other plan participants, retirement plans will eliminate a major source of waste — and, in the process, enhance the quality of communications.

   Currently, the main Department of Labor ("DOL") regulation governing communications with employee benefit plan participants establishes a default rule that favors paper communications and restricts an employer’s ability to use electronic disclosure. Under this regulation, only workers who regularly have access to computers as part of their job, or who have given their affirmative consent in advance, may receive electronic disclosures.\(^3\) Otherwise, employers are required to print documents and mail paper communications. Similarly, certain IRS regulations require reports and statements to be made in paper form, unless the recipient affirmatively consents to receiving electronic disclosures.\(^4\)

   These rules largely were established in a different environment than today. For example, the DOL regulation governing electronic disclosure was issued in 2002. The world was a different place then. Internet access and use of electronic devices that can access electronic

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\(^3\) See 29 CFR §2520.104b-1(c)(2).

\(^4\) See Treas. Reg. §1.6050S-2 (qualified tuition reimbursement and refund reports); Treas. Reg. §1.36B-5 (health insurance exchange annual statements).
communications are far more widespread today and continue to grow at an extraordinary pace. In particular, the use of smartphones and tablets has exploded in recent years — in 2016, 74% of Americans ages 50-64 were smartphone owners (a 27% increase from 2015), as were 64% of Americans in households earning less than $30,000 per year (a 23% increase from 2015). As a result of this growing access and use, Americans increasingly have grown accustomed to receiving and reviewing important information electronically — including information about employer-sponsored retirement plans, as well as other employer initiatives related to their financial wellness. Regulations that put a thumb on the scale of sending paper communications no longer reflect Americans’ preferred vehicles for communication.

Modernizing these regulations can result in significant cost-savings. As just one example, large employers’ retirement plans commonly have tens or even hundreds of thousands of participants. For these plans, the cost of printing and mailing required communications, alone, can cost hundreds of thousands of dollars a year. Limiting paper communications only to plan participants that prefer hard copies or lack Internet access can free up substantial resources that then can be redirected back to employees.

In many instances, these savings can accrue directly to participants. Under ERISA, expenses borne by employer-sponsored retirement plans can either be paid by the employer or charged to participants in the plans. While PepsiCo currently bears the cost of these communications, we are aware that other employers charge plan participants the reasonable costs of these communications. In those cases, reducing the costs associated with participant communications would result directly in lower fees for participants.

In addition to cost savings, modernizing electronic communication rules can enhance the quality of the communications themselves and enable employees to have easier access to relevant documents. Electronic disclosures can include user-friendly and helpful interactive features, such as search functions or links to referenced documents, that can help participants better understand the materials. Updates to electronic documents can be made more rapidly and will generally get to recipients faster than paper. Once received, electronic disclosures can be


6 See id.
more accessible, as they always can be at an employee’s disposal from a computer or mobile device.

To realize these advantages and to more accurately reflect Americans’ preferences, Congress should abolish the paper default requirement and establish a new rule that would provide employers with flexibility to provide electronic communications with appropriate safeguards — that would apply with respect to all communications concerning employee benefit plans and tax-qualified savings vehicles.

To be most effective, the new rule could work as follows:

- If the employer has a benefit plan participant’s personal email address, the employer may use electronic communications, subject to the participant’s right to opt-out and request paper communications.
- If the employer has the participant’s employer-provided email address only, the employer may use electronic communications only if the participant has access to email at their place of work (again subject to the individual’s right to opt-out and request paper communications).
- If the employer does not have the recipient’s e-mail address, the recipient would continue to receive paper communications — unless the participant subsequently provides an email address so that he or she can receive electronic communications.

This rule reflects a common-sense approach to electronic disclosures. Employers should no longer be required to follow an out-of-date default rule that favors sending hard copies. Individuals who want paper communications will be incentivized to request them — and employers would honor those requests. By contrast, under the current rules, individuals who prefer electronic communications may settle for paper communication because of the affirmative steps needed to request electronic disclosures. As recognized by the DOL in analogous contexts, such forces of inertia and bias toward the status quo often run counter to the best interests of workers.7 This proposed rule would overcome this inertia to make it more likely that plan participants will receive communications in their preferred format.

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2. Permit Employers to Locate So-Called “Missing” Participants Using Cost-Efficient Measures and Without Incurring Ongoing Costs and Increased Liabilities for Participants Who They Cannot Find Despite Reasonable Efforts

Employers that sponsor retirement plans often undergo extensive efforts to connect with individuals who might be owed a benefit under the plan but either cannot be found or do not respond to communications. Rules that govern attempts to locate such so-called “missing participants” are of a significant concern to ERIC’s members who through no fault of their own can be subject to potentially serious liability.

Although plans of all sizes deal with missing participant issues, large employers, in particular, often face substantial challenges related to missing participants. Given the size and duration of large employers’ retirement plans (many ERIC members have plans that were established more than five decades ago — for example, one of PepsiCo’s principal pension plan was established in 1943), even the most meticulously administered retirement plans can end up with hundreds or even thousands of missing participants. For example, workers with modest benefits may not think to update their former employer with a current address. Similarly, people who worked for the company a long time ago may not realize that they have benefits and, accordingly, may not provide their former employer with updated contact information. Moreover, many large employers have long histories of corporate mergers and acquisitions. Plan administrators may inherit new participant rosters with incomplete records for former employees of predecessor companies and in some cases, will not have sufficient information to even identify, let alone track down and get a response from, missing or nonresponsive participants.

Compounding these challenges, employers must navigate existing regulations that are vague but, nevertheless, can result in substantial penalties. Under ERISA, retirement plans have fiduciary responsibilities to try to locate missing participants. The DOL has provided no guidance as to what steps are needed to satisfy this obligation, aside from narrow guidance for locating missing participants when a defined contribution plan is terminated (the “DC Plan
Termination Guidance”) — but nevertheless engages in significant enforcement activities that could result in serious penalties. Accordingly, ongoing employee benefit plans may reasonably conclude that they must undertake excessive and costly efforts to locate plan participants, including the use of commercial locator services or credit reporting agencies contemplated in the DC Plan Termination Guidance to locate each missing participant.

Similarly, IRS regulations require plans to make “reasonable efforts” to find missing participants — but fail to provide meaningful guidance as to what this means. Failure to meet this vague standard can result in significant adverse tax consequences, which again may compel plans to undertake extraordinary efforts to try to track down missing participants.

Given this murky regulatory environment, Congress should encourage regulators — or provide legislation — to clarify what constitutes a reasonable — and cost-effective — search for missing participants sufficient to satisfy the legal responsibilities of employer plan sponsors. For example, it could be clarified that a reasonable search consists of a plan sending a form notice multiple times to the last known physical and email address of the participant and his or her beneficiary. If a plan performs this reasonable search and the participant still cannot be found (or remains unresponsive), the obligation to search for the missing participant should be deemed satisfied, such that neither the employer, the plan, nor the plan’s fiduciaries would be subject to any penalty or liability. After completing this reasonable search, a defined benefit retirement

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9 See ERISA § 409(a) (imposing personal liability, restitution, disgorgement of profits, and “such other equitable or remedial relief as the court may deem appropriate” as remedies for a fiduciary breach).


11 Failing to satisfy this standard arguably could be deemed a failure to meet requirements to make distributions upon a “required beginning date” under Code § 401(a)(9), which, in turn, could lead to plan disqualification. See Fixing Common Plan Mistakes-Failure to Timely Start Minimum Distributions, https://www.irs.gov/retirement-plans/plan-sponsor/fixing-common-plan-mistakes-failure-to-timely-start-minimum-distributions.

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plan also should be relieved of any requirement to pay PBGC premiums associated with the missing participant.

In addition, once the search is completed, a retirement plan should be permitted — but not required — to transfer the missing participant’s account, so that the plan would be relieved from the further recordkeeping and administration costs associated with the account. Any of the following options, alone or in combination, would be proper recipients for this transfer:

- **The PBGC, the Social Security Administration, or other Government Agency.** The PBGC currently holds funds associated with missing participants in certain terminated plans and maintains an online registry that allows individuals to run searches to see if they are entitled to any of the assets. This program could be expanded to include missing participants in ongoing retirement plans — or a similar program could be set up in another government agency like the Social Security Administration. In addition, a broader online registry could be established that would empower individuals to locate their own missing benefits, using a legislative proposal from last Congress as a starting point.

- **The Plan’s Forfeiture Account.** Congress or regulators could confirm that a plan may transfer the benefits of a missing participant to the plan’s forfeiture account, provided that the benefit would be restored if and when the missing participant or beneficiary claimed the benefit.

- **IRA Rollover.** Congress or regulators could expand current laws or rules, so that plans could roll over the benefits of missing participants into an individual retirement arrangement, regardless of the size of the benefit.

- **Federally Insured Bank Account.** Congress or regulators could authorize transfer of missing participants’ benefits to a federally-insured bank account in the name of the missing participant. The participant would have an unconditional right to withdraw funds from this account.

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14 Under current law, a plan terms can require cash distributions of benefits less than $5,000, and generally, if a participant is non-responsive, the plan can roll those distributions into an IRA. See Code § 411(a)(11); Code § 401(a)(31); 29 C.F.R. § 2550.404a-2.
• **State Unclaimed Property Funds.** Plans could be permitted to send the benefits of missing participants to State unclaimed property funds.

Any of these options would allow a missing participant’s benefits to be restored, while at the same time ensuring that the employer does not continue to incur the expense and additional liability for maintaining the account of a participant who has not and might never reclaim their benefits.

3. **Confirm that Employers that Sponsor Retirement Plans are not Subject to State Law, Regulations, or Requirements of State-Mandated Retirement Plans**

ERIC recognizes that, for many Americans, there is a looming retirement crisis in our country, and we strongly encourage efforts to increase access to retirement plans — including efforts by States. At the same time, these efforts should not impose additional obligations on employers who are providing retirement plans.

Employers operate retirement plans under a long and well-established principle that Federal law preempts any State’s effort to impose rules and regulations on employee benefit plans. As noted earlier, this is one of the hallmarks of ERISA,¹⁵ and it remains a critical feature for large employers like PepsiCo that have employees in all 50 states and that would not be able to provide benefits effectively if subjected to numerous State requirements.

Efforts by States to create their own retirement plans risk are undermining this core tenet of ERISA. Recently, seven States have passed legislation to implement their own retirement plans. Such legislation can result in new obligations for employers, over and beyond — and in conflict with — what is required under ERISA. For example, Oregon, the first State so far to publish final rules regarding a State-run retirement plan, will require large employers to compile and report information requested by the State every three years. As proposed, Oregon’s rule would have required the enrollment of employees into the employer’s retirement plan within 90 days of hire — a requirement contrary to ERISA.

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¹⁵ See Aetna Health Inc. v. Davila, 542 U.S. 200, 208 (2004) (“The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans.”).

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ERIC applauds Congress’s recent action under the Congressional Review Act to curtail these programs. However, we remain concerned that without stronger guidance from Congress or the DOL, States will continue to implement their own programs that violate the preemption clauses of ERISA. Accordingly, ERIC has urged the Secretary of Labor to use any and all enforcement tools at his disposal to support the preemption clauses of ERISA and protect plan sponsors from burdensome compliance activities that States might impose. Congress should take complementary action to ensure that employers’ retirement plans continue to remain subject to uniform rules and standards — and not to a patchwork of State requirements.

4. Ensure that Employer Retirement Plan Sponsors are Engaged in the Process of Introducing and Implementing Any New Regulation or Legislation

Given the complexities of ERISA, new regulations or legislation — no matter how well-intentioned — pose a risk that unnecessary cost and compliance burdens will be imposed on employer-sponsored plans without commensurate benefits to employees. Such risks are enhanced when regulations or legislation are introduced without serious consideration of the views of the employers who provide such benefits.

The Obama-administration DOL’s advanced notice of proposed rulemaking concerning lifetime income disclosure regulations (the “Proposed LID Regulations”), along with the companion Lifetime Income Disclosure Act, S. 1317 (“LIDA”) that was approved by the Senate Finance Committee in November 2016, are examples of well-intended regulation and legislation that were developed without regard to the impact on the employer sponsor community — resulting in proposals that would impose unnecessary burdens on plan sponsors and needless complexity and confusion for plan participants. Specifically, both mandate that employers calculate, describe and disclose to participants in a specific way, annuity benefits that likely are not available under their own their retirement plans.

In addition, even rules that are not directed at regulating the plan sponsor community can create new costs on plan sponsors and unnecessary confusion for employers and employees. For

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16 See Joint Resolution 66 (effectively repealing the DOL’s rule on state-run auto-IRA programs).
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example, the so-called “fiduciary conflict rule,” while not intended to confer investment fiduciary status on sponsors of retirement plans, has injected uncertainty among employers as to the measures needed to monitor actions taken by service providers in response to this regulation.

To address such costs and complexities, which may not be readily apparent to those outside of the plan-sponsor community, ERIC urges the Committee to do all it can to ensure that plan sponsor views on new regulations and legislation are solicited in advance and seriously considered. Among other things, ERIC would look forward to working with Congress and regulators to develop policy proposals that increase retirement savings and encourage offerings of lifetime income products, including the use of annuities — but without mandates on employers that sponsor retirement plans.

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CONCLUSION

Thank you again for the opportunity to submit testimony on this important issue. I applaud Members of the Subcommittee for focusing on the critical task of seeking ways to reduce regulatory burdens that can negatively impact retirement savings. I hope my testimony will be helpful in developing common-sense legislation that will do that without weakening the rules needed to protect the interests of American workers and their families.

ERIC stands ready to work with Congress to enact legislative changes that will support practical regulation to strengthen the employer-sponsored retirement system and improve delivery of retirement benefits to employees and their beneficiaries. If ERIC can be of further assistance, please do not hesitate to contact Will Hansen, Senior Vice President, Retirement Policy, at whansen@eric.org or (202) 627-1930.

Chairman WALBERG. Thank you. Dr. Furman, I recognize you for five minutes.

TESTIMONY OF JASON FURMAN, SENIOR FELLOW, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. FURMAN. Thank you, Mr. Chairman, Ranking Member Sablan, and members of the committee for inviting me to testify on this important topic.

I'd like to make six points that step back and provide a big economic picture and context, and then get to some of the specific policy issues.

The first point is that in the last decades we've seen a transformation of our retirement savings system from one that 70 percent of people who participated in had the defined benefit plan to one that is now down to 30 percent and 70 percent instead have a defined contribution plan.

My second point is at the same time, we have seen an increase in retirement insecurity. There are different measures that range from about one-quarter to one-half of households that are unprepared for retirement. In either of those cases, it's tens of millions, disproportionately younger, lower income and minority households, and that retirement insecurity has grown over time.

My third point is that defined contribution plans offer a number of benefits in terms of transparency and portability that have made them attractive and are part of the reason for this shift, but they also come with two sets of risks.

The first set of risks is the risk of losing your money in a down market. That risk is inherent to it, and the flip side of the higher returns. The second set of risks is the risk that participants will make bad choices, something that is not a problem in the defined benefit context in the same way. That risk is something that rules can help to ameliorate, and in doing that, help families save for retirement and increase their confidence in the retirement system.

My fourth point is one of the bad choices that people can make is not to participate in our retirement system. They can do that because they work for an employer that offers them a 401(k) and they forget to sign up for it, or because they don't even work for an employer and don't take advantage of IRAs and the other tax advantage options that people have for savings.

Congress helped to remedy this issue for people who work for employers who offer a 401(k) through the Pension Protection Act of 2006, as a result of which many more employers have shifted to auto enrollment, a system that has a 50 percentage point increase in plan participation.

For people who don't have a plan and offer from their employer, they are left without this. A decade ago, the Heritage Foundation came together with the Brookings Institution to come up with a bipartisan plan that would require employers to offer a payroll deduction, give a tax credit to employers to offset the administrative costs associated with offering that, and let employees opt out of the plan.

This is something that would not impose any burden on businesses, and would give employees a choice whether they wanted to save or not. It would just set the default.
The federal legislation to pass this never happened. A number of states are moving forward for experimentation. The rules under the Obama administration were intended to enable those states to experiment. Preventing them from doing so will not just interfere with the retirement security of those households, it will also interfere with our ability to learn from the experience of those states, which could help guide federal legislation in the future.

My fifth point is that another mistake people make is to invest in low return/high fee funds. This is a mistake that is driven in part by the conflicted advice they get from retirement advisors who are in many cases well meaning, but in some cases are steering them to funds because they get higher returns from them.

The Council of Economic Advisors, we estimate this conflicted advice cost $17 billion a year. Another way to think about that is you will run out of your retirement savings five years earlier or the typical household will lose $12,000 on rolling over.

The rules that our administration finalized on this were ones that took into account the input of industry, created a best interest exemption, and made it easier for people to get better advice, saving households tens of billions of dollars.

My last point, which I am happy to discuss more in the questions and answers, is retirement security depends not just on the specific features of the retirement system, but the overall economic context, not just growth and wages, as you correctly said, Mr. Chairman, but also, for example, the health system, and if people lack health insurance, that would make it harder for them to save for their retirement.

Thank you.

[The testimony of Mr. Furman follows:]
Prepared Testimony for the Hearing “Regulatory Barriers Facing Workers and Families Saving for Retirement”

Jason Furman  
Senior Fellow, Peterson Institute for International Economics

U.S. House of Representatives  
Committee on Education and the Workforce  
Subcommittee on Health, Employment, Labor, and Pensions

May 18, 2017

Mr. Chairman, Ranking Member Sablan, and Members of the Committee:

Thank you for the opportunity to testify on the important topic of retirement security. In my testimony today I would like to make six points:

1. The retirement landscape has changed enormously in recent decades, with the decline of defined benefit (DB) plans and the rise of defined contribution (DC) plans.

2. Too many Americans are unprepared for retirement, either lacking access to retirement plans or saving very little in them.

3. DC plans come with two sets of risks: (i) the market risk associated with investments with uncertain returns and (ii) the risk of making poor decisions. The first risk is inherent to DC plans and is the necessary flip-side of higher returns. The second risk reflects decisions by policymakers and may be reduced through effective policy design.

4. One poor decision many make is to not participate in a retirement savings plan. Congress has taken important steps to address this by making automatic enrollment in 401(k)s easier. Another natural step would be a proposal originally developed by the Heritage Foundation and the Brookings Institution to require businesses to offer opt-out Individual Retirement Account (IRA) plans. Absent affirmative Federal action, States and localities should, at least, have the opportunity to experiment with such plans.

5. Another poor decision is to make higher-fee, lower-return investments. This poor decision can be actively encouraged by retirement advisers who are not acting in their clients’ best interest. Well-designed regulations, like the Department of Labor’s (DOL’s) conflict-of-interest rule (also known as the fiduciary rule) can both help middle-class savers and increase confidence in the system as a whole.

6. Reducing access to health insurance, as would result from the enactment of the American Health Care Act (AHCA), would increase financial insecurity for tens of millions of households—and make it harder for them to save for retirement.

Let me now elaborate on these six points.
Point #1: The Retirement Landscape Has Changed Dramatically in Recent Years

Americans’ retirement income comes from many sources. Social Security provides the basic foundation for retirement security through the provision of universal, guaranteed benefits. Building on that foundation, a system of tax-privileged retirement plans provides additional opportunities for savings explicitly designated for retirement. And finally, families accumulate additional private savings in a wide variety of financial and non-financial assets. For the middle class, the most important form taken by these additional savings is home equity.

While this landscape is familiar today, it is markedly different from the landscape that existed in the past. Though the overall share of workers participating in any type of retirement plan has shown little net change over the last 25 years, the share of workers covered by traditional, defined benefit (DB) pension plans—which offer a guaranteed income stream in retirement—has fallen sharply. Today, the majority of workers participating in a retirement plan at work are covered only by a defined contribution (DC) plan, such as a 401(k). As shown in Figure 1, the share of workers participating in a retirement plan who had a traditional pension fell from nearly 70 percent in 1989 to less than 30 percent in 2013. The share of participating workers with only a defined contribution plan increased from about 30 percent to about 70 percent.

Figure 1: Retirement Plan Participants by Plan Type, 1989-2013

This dramatic transition from defined benefit to defined contribution plans has affected only those covered by a retirement plan at work. However, only about half of the workforce has coverage. Most of those without coverage lack access to any workplace retirement plan. Access and participation rates vary significantly by the demographic and economic characteristics of workers, with access and participation particularly low for part-time workers, workers at smaller firms, and low-wage workers, as shown in Figure 2. In addition, access and participation rates are lower for younger workers, Latino workers, and workers with fewer years of education.
Point #2: Too Many Americans Are Unprepared for Retirement

Retirement savings coverage is not an end in itself. Rather, coverage is a tool to help Americans achieve a secure retirement. And even among the population that has coverage, the amount of money saved for retirement is often very low. According to the 2013 Survey of Consumer Finances (the most recent data published by the Federal Reserve), about 40 percent of households with head age 55-64 had no retirement savings accounts, and among households with head age 55-64 and retirement accounts the median balance was about $100,000.

In addition to saving through employer plans, Americans also save through tax-advantaged Individual Retirement Accounts (IRAs). IRAs are particularly important for older Americans, many of whom roll over workplace retirement plans to an IRA upon separation from their employers. Since their creation in 1974, IRAs have grown to hold more than $7 trillion of retirement wealth—most of which derives from rollovers from workplace retirement plans—and now account for nearly one-third of all retirement assets. In addition, IRAs serve a critical role in the retirement landscape, as they offer tax incentives for saving to workers without access to a plan at work, including workers at small businesses or those working part-time.

From an economic perspective, the question of retirement readiness relates to the household’s ability to enjoy a standard of living in retirement commensurate with that enjoyed during working years. Achieving a constant standard of living means that different households need to save different amounts; there is no single amount of savings that can guarantee a secure retirement.

Putting together a complete picture of households’ retirement readiness requires a significant amount of work to collect all of the relevant data and some fairly heroic assumptions. And there is no single right way to do it. Fortunately, numerous researchers have attempted the feat. Unfortunately, as one might expect, they have come to rather different answers.
Figure 3 summarizes the results of two groups of researchers who have tackled this question. The first set of bars present the results of the economists William Gale, Karl Scholz, and Ananth Seshadri (2009). This group built a life-cycle model and used that model to compute optimal wealth targets for every household according to the model’s assumptions. They then compared each household’s actual wealth to its calculated target wealth. They found that roughly 25 percent of households were below their target wealth levels and that younger households were slightly less likely to achieve their optimal wealth target. Among households with wealth below their target, the median deficit was about $32,000.

Researchers at the Boston College Center for Retirement Research, led by Alicia Munnell, took a different approach and computed projected replacement rates and target replacement rates for each household using data from the Survey of Consumer Finances (Munnell et al. 2017). They then used these computations to construct a retirement risk index, which they update every three years when the Federal Reserve releases new survey results. In their most recent update, using data for 2013, they estimate that 45 percent of households with head aged 50 to 59 at risk of an insecure retirement. They define a household to be at risk if its projected replacement rate is more than 10 percent below its target replacement rate. These results are shown in the bars at the far right of the figure. The same approach using data for 2004 yielded a slightly more optimistic assessment of adequacy, with only about 35 percent of households at risk. The 2004 results are slightly closer to the results found by Gale, Scholz, and Seshadri for that year and are shown in the middle panel of the figure.

In either set of results, tens of millions of Americans are unprepared for retirement. Moreover, the results from Munnell et al. show that, when measured consistently, retirement savings inadequacy has grown over time.
Point #3: DC Plans Come with Two Sets of Risks: (i) Market Risk and (ii) Poor Decision Risk

DC plans have a number of advantages that, along with generous tax subsidies, have made them increasingly popular over time. These include greater portability and transparency. But DC plans come with two sets of risks.

The first risk is market risk: returns on DC plans are uncertain—and can even be negative. A person retiring in 2008 faced much worse market conditions than someone retiring in 2006, for example. This risk, however, is the compensation for the higher average returns in these retirement accounts. And it is also a transparent way to account for the risk that gets shifted to employers, taxpayers, and (in some cases) workers under traditional DB plans. This risk could be eliminated if workers invested entirely in Treasury bills, but that would entail a tradeoff against higher returns.

The second set of risks is the risk of making poor decisions. DC plans require a set of decisions at every step of the process. The first decision is whether or not to participate in the plan at the outset. A second decision is how to invest one’s savings. A third decision is what to do with the balances upon retirement and, generally, conversion to an IRA. A final decision is how to withdraw the balances over time, whether in a lump sum, in an annuity, or in some other fashion. There is compelling economic evidence that when confronting these complicated decisions, individuals have limited resources in terms of time and attention, often make choices that do not adequately consider the long run, and, since many face these decisions only once in their lives, are often stymied by their complexity.

The second set of risks can be mitigated by effective public policy and regulation that will both help increase returns to savers and increase their confidence in the retirement system. Such regulation need not reduce choices but should help people make better choices by default—with the option of making whatever other choices they want if they so choose.

In my next two points I will discuss two important ways that regulation can help reduce the unnecessary risk of bad decisions faced by retirement savers.

Point #4: Access to Retirement Plans with Auto-Enrollment Can Help Address the Poor Decision Not to Participate in a Retirement Plan

Economists have extensively documented the evidence that many people fail to sign up for 401(k) plans, in many cases leaving money on the table from employer matches and tax incentives. A simple mechanism can help address this: auto-enrollment in 401(k) plans, whereby individuals are defaulted into a retirement savings plan but can choose to opt out. Such a policy gives people complete freedom to participate or not—and for some, not participating will be the right choice. But establishing an auto-enrollment program changes the default, leading more people to save instead of not to save.
There is evidence that the effects of auto-enrollment can be quite large. For example, economists James Choi, David Laibson, and Brigitte Madrian (2004) found that when companies implemented automatic 401(k) enrollment, participation rates were more than 50 percentage points higher after six months on the job. This difference was persistent over time, remaining more than 30 percentage points higher after three years.

In the Pension Protection Act of 2006, Congress took important steps to enable companies to establish auto-enrollment for their employees, with appropriate protections under the Employee Retirement Income Security Act of 1974 (ERISA). Since then, such auto-enrollment plans have increased rapidly. Analysis published by the Bureau of Labor Statistics found that in 2009-10, 25 percent of establishments with savings and thrift plans had at least one plan with automatic enrollment (Butrica and Karamcheva 2015).

This welcome trend, however, is of little benefit to the roughly one-third of Americans who have no access to a retirement savings plan through their employers. In 2006, the Brookings Institution and the Heritage Foundation teamed up to develop a proposal for these households that would require firms to establish an automatic IRA for their employees that would default employees into retirement savings while giving them the choice to opt out. Under the plan, small businesses would get a tax credit to cover the relatively minimal administrative costs associated with running the system.

Federal legislation on automatic IRAs would be welcome. In the absence of Federal legislation, a number of States and localities—California, Oregon, Illinois, Maryland and Connecticut—have enacted laws to establish such plans. A substantial barrier to the establishment of such payroll deduction savings programs by States has been ERISA. ERISA defines its scope of coverage—which includes any retirement plan “established or maintained” by an employer—quite broadly, such that only minimal involvement or action by the employer is needed to place a plan under ERISA. As such, state payroll deduction savings programs could plausibly be read as requiring employers to create ERISA plans, since they would be mandated to (a) automatically enroll employees and (b) deduct from payrolls to send on to the plan.

However, triggering ERISA coverage would effectively undermine States’ plans, because ERISA explicitly places the regulation of covered plans as a matter of Federal law and preempts any and all state laws governing covered plans. As the Department of Labor has noted, in addition to subjecting plans to a number of statutory and regulatory requirements (e.g. disclosure, restrictions of certain transactions, etc.), “if a state program requires private employers to take actions that effectively cause those employers to establish ERISA-covered plans, the [S]tate law underlying the program would likely be preempted. Similarly, if the [S]tate-sponsored program itself were deemed to be an ERISA plan, ERISA would likely preempt any state law that mandates private-sector employers to enroll their employees in that program” (81 FR 92640).

To remove this impediment, the Department of Labor proposed (in November 2015) and finalized (in August 2016) a rule creating a “safe harbor” from ERISA preemption for State payroll deduction savings programs that meet a number of criteria. On December 20, 2016, in response to interest from cities like Seattle, Philadelphia, and New York City, DOL further
extended the safe harbor to cover plans established by large political subdivisions (i.e. counties or cities) within States that lack a statewide retirement savings program for private workers.

On April 13, President Trump signed into law H. J. Res. 67, nullifying the Obama Administration’s expansion of the safe harbor to localities under the provisions of the Congressional Review Act (CRA). The House and the Senate have both passed H. J. Res. 66, rescinding the underlying August 2016 final rule; the President is expected to sign it in the near future.

This legislation will chill State experimentation in this critical area, increase uncertainty, and impede an effort that would have increased retirement security for a large number of Americans. The CRA resolutions would increase uncertainty for States seeking to establish auto-IRA programs but would not necessarily prohibit them from doing so. (The pilot phase of Oregon’s plan, for example, is still scheduled to be operational by the summer of 2017.) One of the main issues is whether the State plans are judged to be “completely voluntary,” one of the conditions necessary for ERISA exemption. The 2016 rulemaking explicitly changed the threshold from “completely voluntary” to “voluntary” and clarified that automatic enrollment provisions would be permitted. It is possible that auto-enrollment plans would still be deemed “completely voluntary” under the original 1975 DOL regulation, but overturning the 2016 rule would increase the uncertainty on this point, discouraging more States from experimenting with this critical tool for increasing retirement security for Americans without access to a workplace retirement savings program.

**Point #5: A Well-Tailored Rule to Require Advisers to Act in Their Clients’ Interest Can Promote Retirement Security**

Another important area where regulation can help people make better decisions to promote retirement security is the conflict-of-interest rule, also known as the fiduciary rule. This rule, which was finalized by the Department of Labor in April 2016, requires retirement advisers to serve as fiduciaries, acting in the best interest of their clients. The Trump Administration has since delayed the implementation date to June and opened a process for further changes to the underlying rule. Such changes would reduce the return on retirement savings, potentially transferring billions of dollars from middle-class savers to financial institutions.

Because the tax code subsidizes retirement savings, the government has an important role to play in ensuring their safety and security. The conflict-of-interest rule built on earlier efforts to provide basic protections for American pension and retirement benefits, going all the way back to ERISA in 1974. Notably, neither ERISA nor the conflict-of-interest rule applies to investments outside of the subsidized and regulated retirement system.

When people leave their employers, they have to make one of the most important and complicated financial decisions of their lives: whether and how to roll over their retirement savings into an IRA. One challenge was that under the old rules advisers were held to different standards: advice from a 401(k) provider was required to be “prudent and loyal” to participants’ interests—in other words, it had to meet a fiduciary standard. Brokers of IRAs, on the other
hand, were merely required to “avoid conflicts.” The definition of these conflicts was very narrow, allowing most brokers to receive a variety of conflicted payments—commissions, for instance—from the sellers of the products they recommended.

How much do these conflicts matter? A 2015 report I supervised as chairman of President Obama’s Council of Economic Advisers, drawing on over a dozen peer-reviewed studies, estimated that the lower returns caused by conflicted advice amounted to $17 billion annually in IRAs alone (CEA 2015). Clients who received conflicted advice when rolling over at retirement could exhaust their savings five years earlier than they should have.

Many retirement advisers are honest, work hard to provide sound guidance, charge transparent fees, and offer solid recommendations. Emerging business models, including so-called “robo-advisers,” harness technology to reduce costs and provide high-quality advice. But the brokers who make large commissions by providing conflicted advice have a powerful financial incentive to stifle these alternative models.

After receiving extensive input from the industry, the Obama Administration wrote the conflict-of-interest rule to include an exemption allowing a wide variety of payments to brokers as long as firms established strict safeguards against conflicted advice. The rule is more flexible and permissive than the approach taken by the United Kingdom, Australia, and other countries. Most major brokers chose to continue receiving compensation from the funds they recommend, but put in place procedures to reduce conflicts of interest and increase transparency. This is leading to a more competitive and diverse market for retirement advice, with benefits for consumers and brokers alike.

Even with this careful design, the rule still created compliance costs: an estimated $5 billion upfront, along with $1.5 billion annually thereafter. But the goal of sensible regulation should be to maximize net benefits, not to minimize gross costs. The boon to consumers of minimizing conflicted advice is considerably larger than the upfront costs, and it will grow over time as more assets come under the rule’s purview.

Critically, much of the expense of the new consumer protections reflects one-time transition costs as firms developed new approaches to providing advice with fewer harmful conflicts of interest. As a result, the net benefits of continued implementation of the consumer protections are even larger than those estimated at the time the protections were announced.

Undoing the conflict-of-interest rule could reduce costs for some industry actors. But the flipside would be higher fees and worse returns for American savers—along with an additional set of transition costs as the industry adapts once again.

**Point #6: Health Insecurity Increases Retirement Insecurity**

Finally, I want to briefly mention that perhaps the most consequential policy issue for retirement savers that this Congress has considered this year is the American Health Care Act (AHCA). The Congressional Budget Office (CBO) estimated that the version of AHCA originally introduced in
the House would result in 24 million people losing health insurance due to a combination of regulatory changes (like eliminating the individual responsibility to purchase insurance) and an $880 billion reduction to Medicaid over the next decade. (CBO has not yet provided an updated estimate for the revised version of the AHCA passed by the House on May 4.) Moreover, CBO has documented that the legislation would result in increases in out-of-pocket costs for many households—particularly for older households and for those with lower incomes.

The net effect of this legislation would be to reduce effective after-tax incomes for tens of millions of households, increasing their financial insecurity and causing them to cut back on a wide range of activities—including retirement savings. As such, this legislation has the potential to increase retirement insecurity along with its other costs in terms of worse health outcomes and greater financial insecurity.

References


Chairman Walberg. Thank you. I now recognize Mr. Campbell for your five minutes of testimony.

TESTIMONY OF BRADFORD P. CAMPBELL, PARTNER, DRINKER BIDDLE & REATH

Mr. Campbell. Thank you, Chairman Walberg, the ranking member, and the rest of the members of the committee, for the opportunity to testify today regarding the regulatory barriers that we have in our system that face American workers and their families while they are saving for retirement.

I want to stress that the views that I express today are my own. They're not necessarily the views of my clients or my firm. I'm here representing myself in my personal capacity.

All of us here today share the goal of ensuring that American workers can retire with dignity and security, and in order to achieve that goal, we need to ensure that the regulations governing our retirement system are functioning efficiently, and they are achieving their intended purposes.

As this committee knows well, ours is a voluntary system of employee benefits. Private sector employers generally are not required to offer retirement plans, but they do so because of the value that both employers and workers derive from their plans.

That makes it all the more important that the regulatory environment that governs this voluntary system functions efficiently, ensuring worker protections while not imposing unnecessary costs and administrative requirements.

Put simply, inefficient regulation, no matter how well intentioned the goal of that regulation, imposes a direct cost on the very workers the regulation is intended to help, and that cost can be quite significant. Workers can lose access to workplace plans as excessive and burdensome regulations stifles plan formation. Fewer workers will be covered by retirement plans at all if employers find the costs and complexity and the legal risk of administering the plan outweigh the benefits of offering it.

This is already a significant concern for small employers in particular who are significantly less likely to offer plans than large employers.

There are a variety of ways we can assist those small plans, but to help those small business workers, who really are best served by saving for retirement in ERISA plans, we can reduce the regulatory burden without sacrificing those worker protections by using multiple employer plans. Those would allow many small businesses to utilize a common, professionally managed and administered plan, without having to recreate that administrative wheel inside each separate employer.

Inefficient regulation is also preventing plans from better serving the needs of their participants. As the retirement landscape shifted from defined benefit to defined contribution plans, participants increasingly need help in making decisions about their participation, their contribution amounts, and their investment allocations.

Now, Congress did efficiently and the Labor Department did efficiently address some of these issues 10 years ago in the Pension Protection Act with automatic enrollment in the Department of Labor's qualified default investment alternative regulation, and plans
adopting these auto enrollment strategies have seen significant increases in participation, and therefore, ultimately, in retirement outcomes for those workers.

Unfortunately, we are poised to do the opposite next month. On June 9, the Department of Labor’s flawed fiduciary regulation is scheduled to become applicable. Although well intentioned, this rule is in my opinion the poster child for inefficient regulation that will hurt the very people it is intended to help.

The problem is not in the concept of ensuring quality retirement advice and assistance. It’s in the execution of the rule itself. This incredibly broad and far reaching rule makes the Labor Department a primary regulator of the conduct and compensation of financial professionals to roughly $15 trillion in IRA and retirement plan assets, effectively trumping the traditional rule of other more experienced financial regulators like the SEC and State Insurance Commissioners.

It creates massive new class action liability risks resulting in enforcement by litigation, which is perhaps the most inefficient means possible, as it siphons money out of the retirement system and into lawyers’ pockets.

All these changes are resulting not just in one time transitional costs but in ongoing costs and risks that will be borne ultimately by those retirement investors.

The Obama administration predicted significantly positive benefits from this rule, and these rosy academic projections largely missed what are now proving to be real costs and real problems in the real world.

President Trump has ordered the Labor Department to review the effects of the rule to determine what it would do to access to advice and if it would increase the cost of advice for retirement investors, and as part of that the rule was delayed until June 9, and also additional information was requested about the actual effects now that we have 12 months of real world experience in compliance efforts with the rule.

This new empirical evidence based on actual experience shows that the academic predictions that dismissed the rule’s harmful effects were wrong. Advisors and financial institutions are reporting increasing minimum asset requirements for advisory accounts, a shift from commission based accounts to more expensive fee based accounts, reduce the investment product offerings, increase litigation costs, increase liability insurance costs and others.

More troubling, the Investment Company Institute surveyed its members, the mutual fund companies, and found the number of orphan accounts, the accounts that used to have an advisor but no longer do, have increased significantly, and the average balance of those accounts was just $17,000, the small investors who are losing out as a result of this rule.

I look forward to answering your questions. I would simply state that based on the evidence we’ve seen so far, it’s imperative that the Department of Labor further delay the fiduciary rules applicability date until it has completed its review of this new information.

Thank you, sir.

[The testimony of Mr. Campbell follows:]
Statement of Bradford P. Campbell, Esq.
ERISA Attorney and Former U.S. Assistant Secretary
of Labor For Employee Benefits

Before

The U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions

Hearing on Regulatory Barriers Facing Workers
and Families Saving for Retirement

May 18, 2017

Introduction:

Chairman Walberg and Ranking Member Sahlan, thank you for the opportunity to testify today regarding the regulatory barriers making it harder for working Americans to save for retirement.

My testimony today reflects my personal views as a former Federal regulator and as a current ERISA attorney, and not those of any client, of my firm, or of my colleagues. I am not testifying on behalf of any client or any other party.

I commend the Committee for holding this important hearing. All of us here today share the goal of ensuring working Americans can retire with dignity and security. In order to achieve that goal, we need to ensure that the regulations governing our retirement system are functioning efficiently and achieving their intended purposes.

The goal of efficient regulation is not just to protect participants and beneficiaries in plans, although that is an essential function. Efficient regulation in our voluntary system must also avoid stifling the creation of workplace retirement plans, and should expand access to quality investment advice and assistance so that participants in plans can make informed decisions about their financial futures. This is one of the reasons the regulatory process requires agencies to consider less burdensome alternatives to a proposed course of action—how a regulation executes the underlying policy concept has a material impact on its success or failure.

Unfortunately, we are failing in both of these areas. The cumulative weight of decades of rules and regulations is making it harder for employers—especially small employers—to offer plans. Further, we are poised to significantly increase costs and reduce access to investment advice and assistance for American workers and retirees on June 9th. That is when the Department of Labor’s (“DOL”) new, fundamentally flawed regulation redefining fiduciary investment advice
and its associated new and amended prohibited transaction class exemptions (collectively the “Fiduciary Rule”) are scheduled to become applicable.

While there are a number of solutions the Subcommittee will hear today to make it easier for employers to offer retirement plans, there is a clear and straightforward solution to the second problem. The applicability date of the Fiduciary Rule should be delayed until the DOL has completed its review of the new evidence regarding the effects of the Rule. There is now clear and convincing evidence of the harm the Rule as currently constituted will cause retirement savers, and DOL should ensure that it does not allow that harm to continue by relying out inaccurate economic predictions from the prior Administration.

**The Fiduciary Rule is the Product of a Flawed Process:**

The concept behind the Fiduciary Rule—ensuring retirement savers receive quality retirement advice and assistance—is a good one. The problem is that the Fiduciary Rule executes this concept very poorly. Rather than focusing on specific problems, the Fiduciary Rule fundamentally disrupts the way advice and assistance is provided to nearly 100 million people and $15 trillion.

The failures of the Fiduciary Rule are the predictable results of a flawed regulatory process that started with a policy position and then built a rationale to justify the conclusion. The basic problem is that the Fiduciary Rule equates the way an advisor is compensated with the quality of the advice, deeming certain compensation methods to be prohibited despite their extensive oversight by existing Federal, State and other regulatory and enforcement agencies. Under this structure, your financial professional might even be prohibited from making a recommendation that is in your best interest, simply because she receives a commission.

The rationale for this policy belief comes largely from narrow academic studies evaluating a certain type of conflict for a certain type of advisor for a certain type of product, and extrapolating those results across the entire spectrum of advice models and investment products. As many critics have since explained, the underlying academic studies do not themselves support the policies ultimately adopted.

Indeed, DOL partially acknowledged as much in the proposed rule delaying the applicability date by 60 days. Writing that elements of the prior economic analysis used to conclude that conflicts cost $17 billion or more annually due to long term reductions in investment returns were “uncertain and incomplete,” and DOL acknowledged that they were based on a limited assessment of “one source of conflict (load sharing) in one market segment (IRA investments in front-load mutual funds).”

The 60-Day Delay was a Prudent First Step, But Further Delay is Required:

On February 3, 2017, President Trump issued a Presidential Memorandum ordering DOL to review the effects of the Fiduciary Rule on retirement savers’ access to investment products and services; on disruptions to the retirement services industry affecting retirement savers; and on increased litigation risks and costs. Unlike the economic analysis that accompanied the promulgation of the Rule (based on select academic predictions), the new review will have the benefit of empirical evidence based on the efforts of the past year to understand and comply with the Rule.

In order to facilitate this review, DOL requested input from the public regarding the actual effects of the Fiduciary Rule in a comment period ending on April 17th. In addition, DOL initially approved a 60-day delay of the applicability date from April 10th to June 9th. Because of the April 10th deadline, the DOL decision to delay the applicability date by 60 days had to be made prior to receipt of the new information regarding the effects of the rule. Thus, the economic analysis of the 60 day delay remained based on the prior analysis, replicating its flaws. DOL has not yet had a chance to offer a public analysis taking into account new information—it would have such an opportunity in a subsequent regulation providing further delay.

The new empirical evidence based on actual experience shows that the academic predictions dismissing the Rule’s harmful effects, such as reduced access to advice and assistance, were wrong. Advisors and financial institutions reported increasing minimum asset requirements for advisory accounts, a shift from commission-based accounts to more expensive fee-based accounts, reduced investment product offerings, increased litigation risks and compliance costs, and increased liability insurance costs.

More troubling, the Investment Company Institute reported that a survey of its members (mutual fund providers) shows an increase in the number of “orphan” accounts—shareholders who are no longer working with an advisor—as broker-dealers and other distribution partners began implementing plans to stop serving small clients. The average account balance in that survey was $17,138, representing the loss of advice and assistance to the very retirement savers the Rule should be protecting, and who are most in need of assistance.

This new evidence should not have come as a surprise—during the development of the final Fiduciary Rule, even other Federal agencies publicly raised concerns about increased costs. The Small Business Administration’s (“SBA”) Office of Advocacy expressed concerns in its formal comment letter to the Department, questioning the Department’s economic analysis and criticizing the Department for not sufficiently taking into account the effects of the Proposal on small businesses. The conclusion from focus groups held by the SBA was that “the proposed rule would likely increase the [advisers’] costs and burdens associated with serving smaller plans...[and] could limit financial advisers’ ability to offer savings and investment advice to clients...ultimately lead[ing] advisors to stop providing retirement services to small businesses.”

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1 Comment letter from the Small Business Administration’s Office of Advocacy, July 17, 2015, at 5-6.
The Fiduciary Rule should be delayed until a complete review of this new, compelling evidence is complete.

**Lack of Access to Advice and Assistance Hurts Retirement Savers:**

The reality (which is largely ignored by the prior economic analysis) is that not having access to investment advice and assistance hurts retirement investors regardless of their financial professional’s compensation methods. These losses actually cost far more than the $17 billion the DOL Fiduciary Rule analysis predicted the Rule would save. According to a Vanguard study, individuals receiving professional investment assistance have as much as a 150 basis point increase in compound returns, due in large measure to the encouragement they receive to contribute more to retirement savings and to make other changes to their financial habits. This highlights the fact that working with a professional is about more than picking investments—it is about a relationship that includes education and other financial assistance, no matter how the professional is paid.

In fact, DOL itself evaluated the costs associated with lack of access to advice in an earlier regulation. In 2011, the Department issued a final regulation implementing certain investment advice provisions of the Pension Protection Act of 2006 (“PPA”). In the economic analysis related to the final rule, the Department quantified the losses resulting from a lack of advice at more than $100 billion per year, and determined that these losses were due, in part, to the prohibited transaction and fiduciary rules of the Employee Retirement Security Act of 1974 (“ERISA”).

> “Unfortunately, there is evidence that many participants of these retirement accounts often make costly investment errors due to flawed information or reasoning... Financial losses (including foregone earnings) from such mistakes likely amounted to more than $114 billion in 2010. Such mistakes and consequent losses historically can be attributed at least in part to provisions of the Employee Retirement Income Security Act of 1974 that effectively preclude a variety of arrangements whereby financial professionals might otherwise provide retirement plan participants with expert investment advice.”

Yet the same mechanism the DOL noted limits access to needed advice and assistance is the basic mechanism utilized by the fiduciary rule to determine and prohibit conflicts. The effect is further magnified by the fact that enforcement of the prohibited transaction rules in the IRA marketplace is outsourced to private litigants in state-based class actions. Opening the door to a new round of class action litigation fueled by contingency fees is not an efficient means of

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regulating the retirement system (though it does siphon scarce retirement resources to the trial bar).

Given the new evidence demonstrating the harm to retirement savers that is already taking place even before the Fiduciary Rule has become officially applicable, the Fiduciary Rule should be delayed until the DOL can completed its review and decide what next steps to take. If the Fiduciary Rule goes into effect as scheduled, not only will some retirement investors lose access to advice and assistance, but any future changes by DOL will result in further investor confusion and dislocation due to a second round of compliance changes.

**Little Internal Oversight of the Regulatory Process:**

The Office of Management and Budget (“OMB”) serves a number of functions in the regulatory process, but one of its central roles is to enforce the process requirements, including ensuring that the economic analysis informs the development of the policy rather than simply justifying policy decisions already made. While this may work for lower-level regulations, there is an inherent conflict of interest in that OMB and its Office in Information and Regulatory Affairs (“OIRA”) are part of the Executive Office of the President. Thus, where a regulation is a Presidential priority, OMB is much less likely to neutrally impose meaningful standards and control on the process.

The Fiduciary Rule is a good example of this process breaking down—White House officials involved in the policy decisions regarding the content of the Rule were also involved in the economic analysis justifying the Rule. The result was an economic analysis of great length but with a decidedly one-sided view of the issues.

**Why is the Fiduciary Rule Causing Such Disruption to Retirement Savings Arrangements?**

Part of the reason the Fiduciary Rule is having such a negative effect on access to investment advice and assistance is because DOL is applying a fiduciary standard based on ERISA’s regulation of employer provided plans to the Individual Retirement Account (“IRA”) marketplace. The ERISA framework does not fit the IRA marketplace, and the IRA marketplace was never designed or regulated in a manner consistent with ERISA’s requirements. ERISA plans and IRAs are fundamentally different, despite receiving similar tax treatment.

Congress did not intend for DOL to be the sole regulator of the conduct and compensation of various types of financial advisors to IRAs, or for the ERISA fiduciary standard (which is the basis for the Rule’s Best Interest standard) to apply to IRAs. When Congress created ERISA plans and IRAs in 1974, it chose **NOT** to apply the ERISA fiduciary standard to IRAs, although DOL has had interpretive authority over the prohibited transaction rules since 1978.

This Congressional decision makes sense—in an ERISA plan, a fiduciary makes many decisions for participants, and thus a fiduciary standard rooted in trust law strictly governs how he or she makes decisions on another’s behalf. By contrast, the IRA owner makes his or her own decisions, so Congress treated IRAs much as it treated other types of investment vehicles, and
relied on the extensive network regulators and laws already protecting investors and regulating various types of financial professionals.

Congress created a new private right of action and new legal remedies for ERISA plans, but did not create a special cause of action for IRAs. Rather than create an IRA-only cause of action, Congress let recourse against investment professionals be determined by the Federal and State regulation applicable to the type of professional.

The Fiduciary Rule establishes a standard of care for advice to IRA’s and a cause of action through exemptions to the prohibited transaction rules. As a result of the expanded definition of fiduciary advice, perfectly legal and common commission-based compensation arrangements for registered representatives and insurance agents helping IRA owners will become, in one fell swoop, illegal prohibited transactions. DOL then provides special rules, the aforementioned exemptions, that permit some limited commissions, but only if they meet special conditions, including new class action litigation risks.

This approach to remaking the IRA marketplace not only requires massive change that is negatively affecting many IRA owners for whom the current system is more advantageous, but it presumes that the quality of the advice is determined by the compensation method. This leads to the odd result that advice that is in your best interest may be illegal for your adviser to give, simply because of how she is paid.

For example, under the current Fiduciary Rule, as of January 1, 2018, an insurance agent will be unable to recommend a fixed index annuity to you because her commission is a prohibited transaction for which there is currently no exemption. It doesn’t matter whether that recommendation is best for you or not—her compensation, not your best interest, determines her ability to discuss it with you.

In summary, by prohibiting the way certain financial professionals have historically been paid if they give advice regarding ERISA plans, IRAs, rollovers and distributions, and by then offering them a narrow way out through an exemption with extensive conditions, the Fiduciary Rule foists onto investors and their financial professionals a system Congress affirmatively chose not to impose.

**Improving Access to Retirement Plans in a Voluntary System:**

According to DOL data, there are about 90 million active participants in ERISA-covered pension plans, and such plans hold more than $8 trillion in assets.\(^7\) While these are very large numbers that show the significance of these plans to retirement savings, they do not tell the whole story. Larger businesses are more than three times more likely to offer retirement benefits than small businesses.\(^8\) This is in part because it takes a lot of work and attention to regulatory detail to

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8. “Employer-Based Retirement Plans: Access Varies Greatly,” The Pew Charitable Trusts, May 27, 2016. Surveys show “…only 22 percent of workers at companies with fewer than 10 employees report having access to workplace retirement plans, compared with 74 percent of workers at businesses with at least 500 employees.”
offer a retirement plan. The 401(k) may be the most common type of plan, but that does not mean it is easy or simple to administer.

The cumulative effect of decades of regulation and legislation has increased the burden on employers sponsoring retirement plans, making it more difficult—especially for small employers—to offer retirement plans to their workers. While well-intentioned, the growth of rules and requirements over time has increased significantly the complexity of administering retirement plans. Though some simplified plan designs are available to small employers that reduce the administrative complexity, they also come with real restrictions, such as reduced limits on the amount workers and employers can contribute to the plan.

Rather than accept this status quo, Congress and Federal regulators could remove some of these burdens without sacrificing worker protections, improving regulatory efficiency. For example, Multiple Employer Plans would make it easier for small businesses to offer well-run plans with a centralized, professional compliance team, eliminating the need to “recreate the wheel” at each plan sponsor. DOL could review and harmonize the various disclosure and reporting requirements that are not currently well-coordinated, resulting in a nearly constant need for plan activity related to different events and deadlines. DOL could also permit default electronic disclosures, saving a significant amount of time, money and paper.

**Conclusion:**

Thank you Mr. Chairman and Ranking Member Sablan for your commitment to improving our retirement system. I hope that you will also impress on your colleagues on the Ways and Means Committee the importance of preserving the tax treatment of qualified plans and IRAs as they consider comprehensive tax reform. 401(k)s and IRAs are for Main Street, not Wall Street, and we should encourage more retirement savings, not less.
Chairman WALBERG. Thank you, and I thank each of the witnesses for your testimony. You have given us plenty range to ask further questions. Thank you.

I now recognize the chairwoman of the full committee, Dr. Foxx, for her five minutes of questioning.

Mrs. FOXX. Thank you very much, Mr. Chairman. Mr. Kais, the Obama administration issued guidance in 2015 relating to the state run MEPS. In doing this, the DOL exempted the state run MEPs from the employer-based nexus requirement, declaring that a state has a “unique representational interest between itself and its citizens.”

Can you explain why it is troubling for states to receive special treatment in this regard while private sector MEPs have this bureaucratic requirement?

Mr. KAIK. Yes, thank you for your question. It’s been very frustrating to comply with commonality requirements in the private sector. We work with cooperatives, trade associations, and there is a battery of tests they need to pass effectively to offer a multiple employer plan that’s closed. That not existing in the public sector creates an uneven playing field, and it also makes the cooperatives and the trade organizations hesitant to put a MEP together because they’re afraid they might trip a rule or law that does not exist on the public sector side today.

Despite that, we’ve still been somewhat successful helping those organizations, but it’s only the tip of the iceberg. If we had an even playing field, if both types of plans were covered by ERISA and they were voluntary, I think that would create more innovation and allow us to reach more of the constituents you want to reach, which is the small business community and their employees.

Mrs. FOXX. Thank you very much. The federal government has not done a fantastic job of investing Social Security payments over the years. I know many, many state governments, in fact, I think just about every state in the country, has tremendous unfunded liabilities right now in terms of their retirement plans.

So, our governments do not have great histories of helping people invest their money over the years. So, encouraging more of that at the state and federal level, it does not seem to be a really smart thing to be doing.

Thank you. Mr. Campbell, I appreciate very much. I was going to ask some questions related to the last part of your testimony, and I do thank you for talking about the potential cost of the regulation, and the fact that the President has asked for a study of the rules. Thank you very much for bringing that up.

The committee has written DOL twice in the last two months urging the Department not to allow the fiduciary rule to go into effect until the Department’s new economic and legal analysis of the flawed rule is complete, which we hope will be conducted in accordance with the memo from the President.

Can you speculate on what information might come to light as a result of the analysis that could justify significant revision of the rule?

Mr. CAMPBELL. I think we’ve already seen some very important again real world data from the last 12 months roughly, 12 to 13 months of experience, in trying to comply with the rule.
It was in April of 2016 that the administration promulgated this fiduciary rule, and it was at that time based, of course, on prospective predictions about the future based on academic studies. There has been a great deal of criticism about those studies and what they adequately considered and what they didn’t.

In part, now that we have actual real world experience, we’ve now seen how did companies respond to the new requirements, what happened. What we have seen is that it is becoming more difficult for small account balance savers to be able to get access to advice.

We also know, by the way, one thing that I think is worth pointing out, that a lack of access to advice itself has a significant cost.

The Labor Department back in 2011 estimated what’s the cost of lack of advice to people in plans and IRAs, and they calculated it at over $100 billion a year. That’s a significant issue that needs to be balanced, in the new economic analysis.

Mrs. Foxx. Do we not just love it that academics can make predictions, and the real world comes to play, and we get such different results. Thank you very much. I want to thank all of our panelists for being here today. Thank you, Mr. Chairman. I yield back.

Chairman Walberg. I thank the gentlelady. I am pleased to recognize the gentleman from Virginia, our ranking member on the full committee, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman. Dr. Furman, your fifth point says that a poor decision is to get into higher fee, lower return investments. How is it legal for an investment advisor to put someone into a higher fee, lower return investment for a retirement account, and is the standard for advice different with the SEC and Department of Labor?

Mr. Furman. The issue is that when you move from the 401(k) world, where people generally do get good advice, into the IRA world, you make this really critical decision of how to roll your funds over. You do this decision once in your lifetime. It’s a really complicated one. You don’t realize that all of a sudden the rules have shifted, that your advisor doesn’t have to act in your best interest.

There has been a lot of evidence here. The academic evidence on this is very clear, very strong, very bipartisan. The report we did was reviewed by both outside Republican and Democratic economists, all of whom agreed with it, and we can talk a little bit if you want later about what the real experience has borne on this topic as well.

Mr. Scott. How are the state plans that were sabotaged different from what the Heritage and Brookings had recommended?

Mr. Furman. A lot of those states are in the process of setting up plans and haven’t fully set them up yet and figured out all of the details, but the basic idea is to make sure for people who are falling through the cracks in our current system that they have an opportunity to save. That was in the Heritage/Brookings’ plan, and that is a central feature of the state plans. None of them require anyone to save who doesn’t want to. In all of these cases, it’s an option, an option that anyone could easily opt out of.
Mr. SCOTT. There is a difference between participation when you have to opt out as to opt in. Can you comment on that?

Mr. FURMAN. There is a very big difference in participation. The one thing that Mr. Campbell and I agreed on was the Pension Protection Act has extended to employers auto enrollment, and I think that’s widely viewed as a very good thing. It’s increased enrollment in employer plans, and most of the evidence is it’s increasing enrollment for people that it really made sense for, and are happy that choice was made easier for them.

Mr. SCOTT. Thank you. Mr. Campbell, you mentioned the multi-employer plans. What are the challenges in getting people to join a multi-employer plan, to have new plans come in? Is this a last man standing rule? Can you comment on whether or not that prevents people from coming into plans?

Mr. CAMPBELL. Yes, there are several barriers currently to multiple employer plans functioning as we would hope they would. That’s one of the concerns. There is the kind of one bad apple issue, the other is the DOL commonality regulations historically.

I assisted a client in setting up a bona fide trade association MEP, and that process was one of the more frustrating I had gone through, in trying to figure out exactly where the contours of all the rules worked together.

I think it’s a great example of whether it’s through DOL regulation or congressional legislation, there is a real opportunity to improve the availability of plans by addressing those problems.

Mr. SCOTT. Many of the multi-employer plans are close to or in fact are insolvent. That challenge can be addressed if more would actually come into a plan, you could probably get through the short-term insolvency.

I think the things you have suggested would support expanding the ability to get into these plans. Can you say how that would affect insolvency of some of the plans going on now?

Mr. CAMPBELL. Well, I apologize if I misunderstood your question, sir. We have all these fun terminology, the multiple employer plan, the multi-employer plan. I apologize. I thought you were referring to the multiple employer plans.

On the multi-employer plan situation, as you have suggested, there is a significant concern about insolvency, particularly among certain plans. I think there is a lot of active consideration in Congress as to which are the best approaches to address that, whether it’s expanding those to new entrants, which does, of course, run the risk of ensnaring more people in a troubled plan, although that could also, as you said, address the solvency.

I think one of the areas there we ought to look at is looking at the Treasury and PBGC abilities to look at those plans and figure out what the best way to either unwind them or find an alternative solution.

Unfortunately, there’s not an easy answer to that. I think the solution depends in fact on which multi-employer plan you are looking at, how badly underfunded it is, and which industry it’s in, to really assess whether it is reasonable salvageable.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentleman. Mr. Wilson is recognized for five minutes.
Mr. Wilson. This is for Secretary Campbell. American families should look forward to retirement. Yet, too many find themselves without the financial security they need to retire. Congress should support initiatives to place retirement decisions in the hands of American families, yet today we have a 1,000 page ridiculous regulation which increases barriers, which is insulting, I think, to financial advisors and to the people that I represent, where the regulations have been determined that the people I represent are not intelligent enough to know how to make choices.

We need to make a change. That is why in January there was legislation introduced, H.R. 355, the *Protect the American Families Retirement Advice Act*, which would delay for two years the rule for further analysis.

In February, the President announced in a memorandum asking for further analysis. However, the Department of Labor has indicated they may move forward with the June 9 date even if the analysis is incomplete.

Mr. Secretary, you have already cited real world, not academic concerns, but it is important again that the American people know what harm is being done. If the Department of Labor does not move and change the June 9 date before completing the analysis, what would be the effect on the American families?

Mr. Campbell. Unfortunately, I think many of the harmful effects that have already begun in part as companies have positioned themselves for compliance will continue. Unfortunately, in delaying the deadline by 60 days, they didn't change any of the underlying problems with the actual text of the fiduciary rule.

I'll give you an example. Unless the Trump administration does a change to the regulation, beginning January 1, 2018, there will be no way for an insurance agent to recommend to you a fixed index annuity, because they are compensation, the commission they would earn in the normal course of selling an annuity would become illegal, and there is no exemption currently constituted that works for an insurance licensed only entity who is an independent agent, because there is no financial institution that represents them.

That's something that the prior administration started to address with a class exemption, but it's an example that this regulation isn’t fully baked, and has a significant number of operational problems and execution problems that haven't been addressed yet.

So, I would hope that the Trump administration does delay it further in an effort to evaluate the rule as well as to fix some of those operational concerns.

Mr. Wilson. Well, your input is very helpful. Mr. Kais, the former Department of Labor seemed to argue that robo-advisors and other types of low, expensive, passive investment options are best to fill the void of this burdensome and expensive regulation.

Now, robo-advisors, as I understand, and you can correct me, are automated websites that people access on the Internet with minimum human interaction. Goodness gracious, that is ridiculous. Please. People make a difference, particularly financial advisors who are of the highest integrity.

Do you believe that people planning for retirement that have access to the computer software programs have the ability to navi-
gate the programs, the ability to appropriately translate the data on their specific retirement plan and assets? If not, is it not difficult to suggest that robo-advisors are capable of filling the gap left by this overreaching ridiculous regulation?

Mr. Kais. Thank you for the question. In actuality, what happens in business is even if an employee self-services into an online mechanism, they are generally making their call to somebody else to make sure, is this right, did I do it right. Even if they go into the web, they still need some guidance and some reassurance that it is done.

A problem with that, if you walk into a human resources representative of your firm and you ask did I do the right thing, does this look right to you, that H.R. representative could trip the fiduciary regs by just giving casual advice to that employee to try to help them along. I think that is problematic.

LIMRA also published a study recently that 80 percent of people seek advice from someone when doing a rollover. Out of that group, 58 percent obtained a professional advisor’s financial advice during a rollover.

As much as we would like to think people self-service into the online system, that’s not generally true, and when they do, they generally call to make sure they’re doing it right.

Mr. Wilson. Thank you very much.

Chairman Walberg. I thank the gentleman. I recognize the gentleman from New Jersey, Mr. Norcross. He has left the room. I recognize the gentlelady from Ohio, Ms. Fudge.

Ms. Fudge. Thank you very much, Mr. Chairman. Thank you all for being here today. Mr. Furman, in your testimony, you indicate that tens of millions of Americans are at risk of having an insecure retirement.

What in your opinion are the most significant barriers to saving for retirement, and the second part of that question is when so many families have not had a raise in so long, and they are trying to figure out where to spend those resources, what are the most significant steps Congress can take to help working families save for retirement?

Mr. Furman. Thank you for that question. The barriers are one-third of households who don’t have any retirement plan offered to them face a very large barrier. A second is people who have a plan offered to them and don’t participate. A third barrier is people who get lower returns. A lot that is not in the 401(k) phase, but often when they roll their money over into an IRA, and their returns get eaten away by these really large fees that are associated with this advice.

None of these advice people are doing this free. People aren’t doing this advice out of the goodness of their heart. They’re doing this advice because they are going to be paid, and they are being paid through a set of commissions which come out of a non-transparent way these households.

Improving this, I think, involves both the retirement system itself, remedying things like the tax incentives in the retirement system are disproportionately for high income households rather than low and moderate income households. It also involves the broader economic issues of what can be done to raise the incomes,
especially low and moderate income households, like minimum wage and health insurance, that this committee has championed.

Ms. FUDGE. Thank you. It just seems as though it just goes along with what happens here every day, find a way to give rich money more and make poor people just be poor.

Additionally, Mr. Furman, you mentioned that TrumpCare is perhaps the most consequential policy issue for retirement savers this Congress has considered thus far.

Can you elaborate on that and discuss the overall effect of rising health care costs on people’s ability to save?

Mr. FURMAN. Sure. The CBO analysis of the original American Health Care Act, which is the only analysis I’m aware of, said that for households that were older, it would result in higher after tax premiums, and for households that were lower income, it would result in higher after tax incomes.

These are precisely the households for whom it’s most important to save and are at the most risk for retirement, so if they are paying, and under the CBO analysis, some of these households are paying an extra $12,000 a year, that is $12,000 a year less they could devote to a range of things, including retirement savings.

The other thing is the analysis showed those plans would result in higher deductibles and higher out-of-pocket payments. Again, that’s another place where your health costs would be competing with your retirement savings.

Overall, if you have a health bill that is subtracting money from the health system and using that money to pay for tax cuts for high income households or for any other purpose for that matter, it’s likely to increase retirement and security.

Ms. FUDGE. We are very clear that TrumpCare really is a plan that benefits the young, the healthy, and the wealthy, and sort of punishes significantly the sick, the poor, and the elderly. So, we do indeed know it is going to affect their retirement.

Last question for you, Mr. Furman. I am glad you talked about the fact that these advisors are not doing this out of the kindness of their hearts, but in fact, they do get paid.

If you could just talk a bit about the fiduciary rule, and why it is winning in the courts, as a matter of fact, even though it is so significantly flawed, as I keep hearing, and the ramifications for not allowing the rule to go forward.

Mr. FURMAN. Sure, thank you for that question. Academic evidence helped inform the rule, an extensive consultation process, that was about as extensive as any I have witnessed in my eight years in the Obama administration, where we talked a lot to industry, to all stakeholders, which helped inform it, too.

To be clear, the rule has costs and benefits. It has both. We documented both. I don’t disagree with the costs. Those costs are largely borne by parts of the financial industry that were benefitting at the expense of middle class households, and those benefits go to middle class households.

So, I’m not surprised that there is opposition to it. Many of those costs, by the way, as Mr. Campbell said, have already been incurred, so if you reverse the rule at this stage, you’d be left with all the costs, and you wouldn’t get many of the benefits that households would get, and those benefits are they would continue to get
advice, as they have in Australia, the U.K., and other countries that have done more far reaching rules, they get better advice, have more retirement savings, and the system as a whole would benefit as a result.

Ms. FUDGE. Thank you very much. Mr. Chairman, I yield back.

Chairman WALBERG. I thank the gentlelady. I am pleased to recognize the gentleman freshly back from a great honeymoon, and we congratulate you and recognize the fact you even joined us in our field hearing event out in San Francisco on your honeymoon. That is dedication.

Mr. ROE. I took one for the team.

Chairman WALBERG. I am pleased to introduce Dr. Roe.

Mr. ROE. Thank you very much, Mr. Chairman. I have had a passion since I began my medical practice in 1977 for retirement savings. We started a retirement plan as a small business with four doctors and 12 employees. We now have 450 employees and 120 providers in our practice.

I also served as the Mayor of Johnson City, Tennessee where we provided retirement benefits for the teachers and the city employees.

I have had extensive experience in starting a pension plan, and now seeing people in my practice that have benefitted from it for 40 years. I can assure you that the investment advisors that we started with were not fiduciaries, they helped us set up a plan that we could afford and put money in for people.

One of those first 12 employees still works for my practice, and has multiple, six figures, in her retirement plan. She is a medical assistant. I am very, very proud of that fact. I have seen other people retire and have that.

To assume that people because they are investment advisors are there just to take your money is offensive to me. My investment advisor has been with me for 25, maybe now 30 years. They are just like my doctor, my attorney, part of my family.

I think we should start saving at birth. Mr. Polis and I have a bill that we are going to introduce this year that will do just that. I agree that we do not start saving enough or soon enough. We are going to start trying to put a plan in where you do that.

The fiduciary rule, in my opinion—this is just someone who has done a pension plan, I believe it does deter and prevent people in small business.

Mr. Sossa, I want to get to you and just ask you about the current regulations that establish different requirements for electronic delivery depending on the type of disclosure being provided to a plan participant. Could you just deal with that a little bit?

By the way, I apologize for having a Diet Coke up here.

Mr. SOSSA. Your question was with the lifetime disclosure regulations?

Mr. ROE. Yes, sir, if you could.

Mr. SOSSA. I can’t really think of many acts that come out that really we are opposed to in their intent. We were trying to help employees. We fully agree. We have been providing financial education since 2008. The challenge is we’d like to have that discussion with employees, but not in the context of a statement that’s really taken out of context.
Most of our front-line employees are in defined benefit pension plans. They are active and live. So, that is only one part of their retirement.

I would prefer to have that dialogue in a much more comprehensive financial education discussion rather than a sheet of paper which all I can guarantee you is that number is going to be wrong. The assumptions that go into that, interest rates, mortality, when someone is going to retire, that number is not going to be accurate.

With the 85 percent of our workforce blue collar, I know in three to five years, someone is going to come back and ask for that number, and I'm not going to be able to explain what it is and how it fits into their retirement.

Mr. ROE. Secretary Campbell, could you also discuss, and I know you have in some detail, about the effects of the fiduciary rule, which I was very involved in the last Congress and this one also.

Mr. CAMPBELL. I apologize, sir.

Mr. ROE. On the fiduciary rule, could you delve into that a little bit, the effects of it?

Mr. CAMPBELL. Yes, sir. Again, I think it's not that it's a bad concept. I think it's truly is the execution that the Labor Department has gone through in trying to implement this.

What the Labor Department has done is equated the way an advisor gets paid with whether or not the advice is of the sufficient level of quality. So, you end up with these very odd results, where as I mentioned before, because of the way they do the exemptions, which allow you to potentially get paid for a form of payment they don't approve of, if you follow all the special conditions, not all of those conditions are in place, so there are in fact advisors, particularly insurance agents in the current environment, who come January won't be able to give advice on a variety of products, even if that advice is in your best interest.

So, those are some of the odd outcomes that result from a rule that's been poorly executed, and a lot of that, I think, does have to do with Labor Department's overreach.

Something Dr. Furman said that I think is worth mentioning, he talked about the extensive consultation with the financial services industry, and in his testimony, he alluded to changes in the BIC exemption that addressed those. I think it is important to note that what happened with the BIC exemption is it went from a proposal that was literally unworkable to a final regulation that is merely terrible in how it works.

I think that's a modest improvement but not one that I think we should be proud of.

Mr. ROE. Just for the record, Mr. Chairman, I know the CBO estimated that the ACA shop would have 4 million people in, now it has 250,000 being shut down, the CBO estimated there would be 24 million people getting their insurance through the ACA and the individual market, less than 12.

I would ask unanimous consent that we submit these two documents for the record.

Chairman WALBERG. Without objection. Hearing none, they will be submitted.

Mr. ROE. Thank you, Mr. Chairman.
Chairman WALBERG. I thank the gentleman. I am pleased to recognize the gentlelady originally from Michigan and now impacting in Oregon in a great way, Ms. Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman, and thank you to all the witnesses for this important conversation today.

Retirement security is an issue that comes up no matter where I am in Northwest Oregon, and we know working families across the country should be able to retire with security and dignity, and unfortunately, that is still not the reality for too many people. A lot of people still struggling to make ends meet and cover emergency medical bills or a car accident. There are millions of private sector workers who do not have access to retirement savings plans at their jobs.

I really see that as a role for Congress, something we can be doing to help those families who are facing retirement without that security.

I want to ask a question, but I just want to make a statement about the fiduciary rule. I sat in many long hearings in this very room listening to people from the industry and from the Department of Labor talk about that. Everybody from the industry agreed there should be a fiduciary standard, in this room.

I just want to echo Dr. Furman’s comment, this rule took a lot of time, they went back to the drawing board, they took a lot of input from industry when they crafted that rule and made a lot of changes in large part because of concerns they had raised.

I am certainly glad to hear all of you echo that investment decisions should be made in the best interest of the consumer.

Mr. Kais? Did I say your name right?

Mr. KAIS. It’s Kais. Close enough.

Ms. BONAMICI. I noted in your testimony, you said Transamerica supported the joint resolution, and I know Mr. Sossa did as well, nullifying the prior administration’s rule allowing states, like my state of Oregon, to establish workplace retirement savings programs for private sector workers who do not have access to one.

I have, of course, followed that process in Oregon quite closely. Your footnote in your testimony states “We supported the rescission because the state-based IRAs would have undermined the adoption and maintenance of plans subject to ERISA, which provide far greater benefits and protections than the state IRAs.”

I noted on Transamerica’s Web site that you offered a Transamerica IRA, which I understand is basically a traditional IRA or a Roth IRA. Now, those may be great for retirement savings, but they are not ERISA plans.

I am a little curious about how Transamerica can oppose state efforts like Oregon’s, which is essentially a Roth IRA, how can they do that, when Oregon has tried to expand access to retirement programs. You oppose it because it would not be subject to ERISA, but then simultaneously, you are offering products that are not subject to ERISA.

I want to note before you answer that the Oregon program was set up again with a lot of input, especially a lot of small employers who welcomed this opportunity. It is a Roth IRA, which is what you offer. In our state, it stays with the worker from job to job. Peo-
ple who do not need to participate, they can easily opt out at any
time if they do not want to be in.

It is overseen by a board, underneath the State Treasurer. It is
managed by a private firm that was selected through a competitive
bid process, and the safe harbor rule only applied if certain condi-
tions were met.

I am a little curious, it seems inconsistent that you offer a Roth
IRA and then you are saying Oregon cannot do that under these
circumstances.

Mr. Kais. Yes, we offer a Roth IRA and IRA as you do. I think
the confusing part for us is when there is a mandate to automati-
cally enroll into that IRA, that is to us what would trigger ERISA
coverage.

I think it’s fine. We support the state offering programs that
could cover more employees. If it’s a qualified plan, we believe
those employees deserve the protection of ERISA. If it’s an IRA and
there is a mandate, those plans often have no employer matching
contribution. They have lower contribution limits than a qualified
plan. There has been no economic analysis on the cost and ability
for states to manage those plans.

Ms. Bonamici. Before my time runs out, I just wanted to men-
tion there is a great book on behavioral economics by Cass
Sunstein and Richard Thaler called “Nudge.” Encouraging people
to take steps that are beneficial to them. This might come down to
the definition of “mandate” versus “voluntary.” People are going to
opt out of this at any time easily. I do not see that as a mandate.

Today, I am introducing the Preserved Rights of States and Polit-
tical Subdivisions to encourage the Retirement Savings Act, which
is the Freedom to Prosper Act also being introduced in the Senate,
that would codify the Obama administration’s actions to remove
the barriers—that is what we are talking about today—removing
barriers that prevent workers from saving for retirement.

I really see a role for Congress to help get people into these prod-
ucts that help them save for retirement, and I hope we can have
further conversations about how to do that.

I am out of time, and I yield back. Thank you, Mr. Chairman.

Chairman Walberg. I thank the gentlelady. I am confident we
will have further conversations. Now, I am pleased to recognize my
good friend and colleague from Michigan, Mr. Mitchell.

Mr. Mitchell. Thank you, Mr. Chairman. Let’s start with you,
Mr. Kais. I will give you a little time to talk about these private
sector MEP programs administered by the state, and all of the long
discussion that occurred about their value, exempting them from
the requirements.

Was there some kind of sound public policy reason why they
were exempted other than political expediency? Can you explain
that to me?

Mr. Kais. I have no idea. It doesn’t make sense to me. I think
if we are talking about protecting workers, I think ERISA provides
a lot of protection. I think we should want that wherever we are
providing a retirement solution, whether it’s public or in the pri-

Mr. Mitchell. Mr. Campbell, can you shed light on where the
sound public policy is for making those exemptions?
Mr. Campbell. I share the same question that you have. If you look at the history of how the Department of Labor has interpreted multiple employer arrangements and what the commonality nexus needs to be, I think that’s been based more on a creation of their own policy than it is on the underlying law.

When the issue came up in the guidance, in the Interpretative Bulletin dealing with state sponsored MEPs, they basically determined that without really a whole lot of analysis other than well, states represent the people, therefore, states can do this, and they have an inherent interest that is different than private employers.

Personally, I think the DOL position historically has been wrong, and there shouldn’t be a barrier to open MEPs, and that is something I think the DOL could change. During the Obama administration in one of the budget submissions, it indicated it would change. That just never happened.

Mr. Mitchell. I am entertained by policy guidance rather than actually issuing regulations, but that is a whole other separate conversation that we will have in OGR.

Mr. Sossa, I can ask you this question that I cannot ask the other two because of their fiduciary responsibilities. If I told you there was a plan I was considering investing in, their funded liability had fallen to 37 percent, that their unfunded liability was $130 billion, but hey, it sounded like a heck of a deal to me.

As a friend, we are out having a beer on the golf course or something, would you tell me that is a great idea?

Mr. Sossa. I will not speak on behalf of ERIC.

Mr. Mitchell. That is why I asked as a friend.

Mr. Sossa. As someone who has been 20 years in benefits, no. We typically look for plans that are funded much better than that. We typically look at benefits accrued, at least funded to what your accrued liability is, whether your benefits earn today, at least funded to those, and some margin towards your benefits accrued toward the future.

Mr. Mitchell. I generally do, too, so I was shocked when one of my colleagues raised up the state of Illinois as being an incredible place. These state plans could clearly do well.

The state of Illinois state retirement plans have $130 billion unfunded liability. That is not something made up. This is a bipartisan group. The state fiscal agency does it. Here is the reason they have fallen short. In fact, they have lowered the long range investment returns on the plan, that in fact the plan is under performing from the assumptions they made themselves, leaving either the state or the employees on the hook.

Yet, we want to give more flexibility to the states to create plans for private sector employees because they are better shepherds of the money than private investment groups? Somehow, we are worried about fees when in fact they are not doing well. I guess I am a little stymied on what the logic on that would be. Can you help me with that?

Mr. Sossa. I can speak about what we bring to the table, in the spirit of large employers. There are three key advantages that we bring to our programs. We bring professional management, experts in the field, selecting investing/investment choices, putting em-
ployer money into a lot of our plans. The other is a level of professional tools and resources that we can provide to the programs.

In the context of what we’re trying to preserve here, it is that type of value that we bring to the table. I think all the intent of expanding programs to state levels, and all exactly completely align, what employers are looking for, we agree on the problem, allow us to develop the solutions that are pertinent and flexible to the populations we own and we manage.

Mr. MITCHELL. Let me get this one question out because I do not want Dr. Furman to feel neglected from this side of the aisle over here.

My background is economics and public policy. I did not have the good fortune to go to Harvard, I had to get a real job, could not go get a Ph.D.

I appreciate your comments in the written testimony and your oral testimony. Yes, access to health care is important, long term economic viability, but it is also affordability of insurance, affordability of actually getting health care, and we have seen ample demonstration that ACA did not do that.

If you could talk about what does do that rather than try to defend something that is clearly falling around our ears, that would be productive in a public policy discussion, if you want to have that debate, call my office, I am happy to have it and we can talk about economics as much as you like.

Let’s try to move forward rather than try to defend something that most people say unless we throw more money, it is a train wreck.

Thank you, and I yield back.

Mr. FURMAN. Did you want me to respond to that?

Chairman WALBERG. Since we are fair around here, and I am sure my colleague would want to be fair, a brief answer or response.

Mr. FURMAN. I agree very much that our goal should be lowering the overall cost of health care, and if you do that, you can make everything better, the solvency of Medicare, the premiums families pay, the cost to the federal government.

There are a number of steps in the Affordable Care Act to reform delivery system, many of which this Congress built on in the MACRA legislation, extending it to physician payments as well, shifting to alternative payment models.

Partly as a result of that, we have seen health costs as measured by the PCE growing at the slowest rate they have grown since the passage of the Affordable Care Act. I think more needs to be done.

I would cite two things. One is aggressive implementation of the tools that Congress gave to HHS on a bipartisan basis in MACRA, less bipartisan basis in the ACA. Second, giving private sector an incentive to continue to control costs by making sure we’re not conferring tax advantages on very expensive health plans and the Cadillac tax was intended to do that, but I am happy to continue that discussion.

Chairman WALBERG. I thank the gentleman. It was significantly less bipartisan involved in the ACA. I think the figure was zero.

Now, I am pleased to recognize the gentlelady from Delaware, Ms. Blunt Rochester.
Ms. Blunt Rochester. Thank you, Mr. Chairman, and thank you to the panel. I guess I will start off by saying I am glad this is a bipartisan issue that we are dealing with here, particularly when we talk about retirement and the security of families and individuals.

In my state of Delaware, over 90 percent of our businesses are small businesses. This is a really important issue, particularly with the MEPs.

I wanted to address my question to Mr. Kais. In your testimony, you mentioned that 89 percent of workers who have access to retirement savings plans, like a 401(k), are saving for retirement, but only 47 percent of workers who are not offered a workplace savings plan are doing so.

Based on those numbers, I think we all would agree that we need to encourage more of that. Can you explain how open multiple employer plans could help address this problem, and also talk a little bit about the elimination of the one bad apple rule?

Mr. Kais. Sure. I've done a little bit of work with the Chamber in Delaware, so it's great to have your question, thank you.

Open MEPs clearly would help as it would relate to removing barriers, to having employers pull together to gain lower costs for their retirement plans, to eliminate administrative burden, and to reduce fiduciary risks. Those are the three reasons why employers don't have a plan today by and large.

If you're not a client of a professional employer organization, H.R. outsourcing, or if you're not part of a trade association or cooperative, why shouldn't you be afforded the same opportunity to band together with other employers?

The one bad apple rule has been a deterrent because employers are afraid of what might happen with another rogue employer in the plan. I don't believe, and Mr. Campbell can probably correct me if I'm wrong, there is any case law that a plan has been disqualified because of the one bad apple rule, but what it does do, which is unfortunate, is it makes people think twice about getting into the arrangement.

There are plenty of ways to mitigate that risk and to protect the others, and that shouldn't be a deterrent for retirement security.

Ms. Blunt Rochester. The other question is based on your experience, your current experience with MEPs, how would an open one operate? Could you talk a little bit about that?

Mr. Kais. Sure. Each employer would not have to file their own tax filing, first of all, which would be very important, there is an overarching tax filing. There is an overarching audit. Everything would still be reportable to the different agencies for enforcement and for review.

Each employer would be able to maintain some flexibility in terms of developing the contribution formula that meets their business needs, meets their employees' needs.

Also, the best thing about open MEPs or MEPs in general is you can set up a mission control tower effectively and design the arrangement in a way that promotes automatic enrollment for thousands of employers at one time, rather than begging and trying to explain the merits to one employer at a time.
Moreover, you are able to prevent leakage as well. You can limit distribution types, loans, there are different things you can do, leave the money in the plan, and encourage the highest level of savings possible for many employers at one time.

Ms. BLUNT ROCHESTER. Thank you for bringing up our Chamber. We have a very, very active State Chamber, and also our local Chambers. I know this is something they have been talking about for actually decades. It goes back decades, conversations. Thank you so much.

Thank you to the panel, and I yield back the balance of my time.

Chairman WALBERG. I thank the gentlelady. Now, I recognize the always positive/optimistic gentlemen from Georgia, Mr. Ferguson.

Mr. FERGUSON. Thank you, Mr. Chairman. Thank you all for taking the time to come today and inform us and speak to us.

The first thing I would like to do is ask Mr. Campbell, what do you think is the most significant impact on how the fiduciary rule has changed the investment landscape, particularly as it relates to small businesses like I operated for 25 years?

Mr. CAMPBELL. I think one of the most significant effects of this—just to correct something Dr. Furman had said about my previous comments, I didn’t say that most of the costs were transitional one-time costs. I said in addition to the transitional costs, there are real ongoing compliance and litigation risk costs, so it is not just a transitional issue.

All of those costs are resulting in several effects. First of all, it’s making it less profitable, and it is, of course, a profit-making enterprise, to provide financial advice, less profitable to serve smaller clients, so that is resulting in minimum thresholds increasing, which is reducing access for small account balance savers, who are in many ways the people who most need assistance in making some financial decisions and establishing plans that will result in future savings.

A lot of the decisions that are being made about how to implement the rule are being driven by fear of litigation because the BIC exemption, the best interest contract exemption, has effectively outsourced enforcement of this to the Trial Bar to bring in class actions in state court.

When you make decisions that are driven by fear of litigation, those may not be the optimal decisions that you would make if you could otherwise best serve your clients.

There is a whole host of these types of tradeoffs that are having to take place as the industry figures out how to comply.

Mr. FERGUSON. A term in health care, we always called it “practicing defensive medicine,” I guess you are now talking about defensive investments?

Mr. CAMPBELL. Not necessarily investments, but really the whole structure of how compensation arrangements are set, what products are being offered, which products are no longer being offered, which accounts are being served with which levels of service.

There’s a variety of different responses that are occurring in the industry, but in general, there is definitely a disadvantage to small account balances, to small plans, in trying to get the level of service they have gotten in the past.
Mr. Ferguson. With the SBA and Office of Advocacy, you all did make comments during the public comment period.

Mr. Campbell. The SBA did make comments. Yes, sir.

Mr. Ferguson. Typically, when one government agency makes comments to another government agency, are those generally taken pretty seriously? Has that been your experience?

Mr. Campbell. That was one of the interesting things about the proposal and the comments on it, several entities, not just the Small Business Administration, but FINRA as well, went on the record to publicly criticize in public comments the proposal, which suggests there really hadn’t been adequate consideration behind closed doors, which frankly is normally how Federal entities will address these concerns through the OMB review process.

Mr. Ferguson. Do you have any idea why these were not addressed in the final rule?

Mr. Campbell. Someone had previously discussed the length and breadth of the process, how many days the comments period were, how many pounds the economic analysis weighs. All of those are true. A great deal of work went into this.

At the end of the day, federal agencies have a tremendous amount of discretionary authority, so the policies they pursue, if they check the boxes on the process, don’t necessarily change, despite the amount of time we spend debating them.

I think this rule is a good example of where the changes that should have occurred, many of them did not.

Mr. Ferguson. Mr. Sossa?

Mr. Sossa. I’m not speaking on behalf of ERIC, but you talked about sort of the defensive investment approach. There is a defensive administration component of this. As I stated earlier, 85 percent of our population is blue collar. They ask us two key questions every time they come into our plan, how much do I need to save and where can I put it. We do everything we can to answer those two questions.

We have no issues with the intent of the fiduciary rule, the lack of clarity and understanding where we may hit trip wires is what’s going to cause us and large employers to pull back.

We have billions of assets under management with significant compliance risks. The risk of tripping the compliance in those areas is going to cause us to try to do everything we can to avoid that risk.

That is really the challenge that we’re facing. Again, and I feel like I’m repeating myself, it’s usually never the intent of what is trying to be solved, it is how it’s being addressed and imposed on employers. We can agree on the problem, let’s find a solution that works within our area.

Mr. Ferguson. Mr. Chairman, thank you. I yield back.

Chairman Walberg. I thank the gentleman. I am now pleased to recognize my friend and the ranking member, Mr. Sablan.

Mr. Sablan. Thank you very much, Mr. Chairman. Dr. Furman, do you agree that open MEPs would be as beneficial to increasing access to retirement savings as the other witnesses claim?

In your view, are there other solutions that would complement or supplement open MEPs, or should be pursued instead of open MEPs?
Mr. Furman. I have not studied the issue in the detail that would be required for me to make a confident statement on it. I think the goal behind it of reducing costs and giving small businesses access to ways to offer savings products to their employees is just something I think many businesses want to do, and some are deterred from doing by the cost. One would want to make sure you continue to protect those employees as they are making those savings.

Mr. Sablan. Thank you. Before I forget, I would like to also take my time, Mr. Chairman, to recognize in the gallery a young lady, my niece, actually, from the Northern Marianas, who is getting real life experience work here in Washington, D.C., and hopefully will eventually return home to share what she learned here. Carla, welcome.

Chairman Walberg. We certainly welcome you here, and proud to have your uncle here.

Mr. Sablan. She is actually here staffing for Mr. Sossa. Treat her well, Mr. Sossa. Thank you.

Mr. Kais, I appreciate you noting in your testimony the importance of customers achieving a lifetime financial security. I am interested in hearing what Transamerica is doing, for example, to serve those in remote locations. I know you do not have customers in the Northern Marianas. I think you do have four or five in Guam, I understand.

How do you serve Guam where many financial services do not operate?

Mr. Kais. Great question. I used to live in Hawaii, so next time I'm in town, we can get together to talk. A great question. We work with employers and employees that are remote every day, whether it is in the continental mainland of the U.S. We do one on one phone calls and support. We fly people all over the country to meet with employers and employees.

I'm not quite sure how many calls we've done to your district, but technology allows us to reach a lot of employees. We treat small businesses just as we treat our largest clients.

Mr. Sablan. Thank you for sharing. It could be useful for small businesses and workers in the Northern Marianas.

Mr. Kais. Absolutely. We're delighted to discuss that with you.

Mr. Sablan. Thank you. Let me ask you another question. We heard today the difference of opinions from both sides, but there is really some things where there is bipartisan support to open MEPs.

Let me ask you, from your testimony I was pleased to learn that 89 percent of workers who have access to retirement savings plans, like a 401(k), are saving for retirement, but only 47 percent of workers who are not offered a workplace savings plan are doing so, so it seems to me our goal should be to do everything in our power to help encourage more employers to offer retirement plans, and as a result, we would appreciate the amount of workers saving for retirement.

Can you help me better understand how open multiple employer plans would help address this problem?

Mr. Kais. I'd be delighted to. Again, three reasons why employers don't offer a plan, because they believe it is fraught with risk, it's administratively burdensome, and it's not cost effective.
So, by and large, the open multiple employer plan does a lot to mitigate the circumstances, making it easier to get into the plan. Other things like tax incentives, to put in auto enroll, stretch match, things like that would be also helpful.

Once you are in the plan, you have to cover the employee first, once you cover the employee, how do you get them saving the maximum amount possible. That is where we all could use help.

Mr. SABLAN. Thank you. My time is up, Mr. Chairman.

Mr. ALLEN. Thank you, Mr. Chairman. Thank you for having this hearing. As we know, this rule has been discussed quite a bit. In fact, in my district, it is hugely unpopular. I do not think I have had anyone who has come to me and said please make sure that fiduciary rule gets done up there. I think it is 100 percent against this thing.

What can this thing do to us? Would it cause a lack of access to advice? We talked about litigation, market disruption, increased costs to consumers. That is what we are talking about here today.

As a small business owner, I know firsthand how Washington, D.C. can affect a business. I was there for 35 years. We got a June deadline looming.

Mr. Campbell, you have already talked about some of the real-world ramifications for small business owners and industry, and Americans trying to save retirement. In fact, you have already mentioned that even though the rule is not a rule yet, maybe this is already happening in the investment world out there, affecting those who request and require investment advice. Is that correct?

Mr. CAMPBELL. Yes, sir. Unfortunately, you can't just flip a switch and get into compliance starting June 8. It takes months. In fact, when the fiduciary rule was promulgated, the 12 months that were given to make the transition was widely viewed by folks who were going to actually have to do the transition, as being inadequate, that it was an extremely accelerated schedule to make the magnitude of the changes required by the fiduciary rule. We are already seeing some of those changes being put into effect.

There isn't a single answer in terms of all companies will do X. What we're finding is it's a highly individualized response, so as a result it has taken many months of effort and many millions, actually, billions of dollars, to figure out how to begin to comply.

So, some of the rules' effects have already gone into effect in the sense of changing the way accounts are set up, sending out notices, closing IRAs to new investment in order to fit into this or that provision of this or that exemption. Some of that has already occurred in advance of June 9.

Mr. ALLEN. Is it creating some of these very problems that we have discussed and I think you shared with us?

Mr. CAMPBELL. It is. Those problems are beginning, but obviously once it's fully implemented is when we will see those really take off.

Mr. ALLEN. Backlash; yes. Mr. Sossa, you had mentioned obviously this rule is very problematic for the investment agency, and for those who give investment advice, but you seemed to indicate that we needed to have a conversation about how we currently do
business and maybe how down the road some changes do need to be made, not this rule, but some changes to the way we do business in the investment world. What would be your solution?

Mr. Sossa. I’ll answer it in a couple of ways. The fiduciary rule of itself again is not something we are having a challenge with, it’s understanding what the rule is doing and how we comply with it. In essence, building the car is not a bad idea but if you build a bad car and it breaks down, you haven’t gotten anywhere.

From my perspective, from the large employer landscape, both on behalf of ERIC and a practitioner, as I said earlier, we agree on the intent. What we’re looking for is the flexibility and the understanding to work with you, what is the goal we are trying to solve, what is the problem we’re trying to solve, 99 percent of the time everything that comes up as fiduciary rules, the long-term income disclosure, all are meant to draw protection to employees, encourage savings.

If you look at the large employer market, they probably have been doing that for 10 years already, and are doing it in ways that are applicable to their employees. We have been doing financial education since 2008, recognizing we need our employees to retire.

As you are developing the policies, developing the “what’s” as opposed to the “why’s,” that you engage organizations like ERIC, so we can put things together that solve the problems. Many times when we get regulations imposed on us, we end up doing them twice. We do them once to comply with the regulation, and then we do them for real, to solve a problem.

The problem is still the problem. We’re just not doing it in a way that is effective for our organizations.

Mr. Allen. Again, the biggest problem I have with this top down, one-size-fits-all bureaucratic system up here, they never seem to go out and talk to the very folks this is going to impact.

Mr. Sossa. Thank you.

Mr. Allen. This has to stop. I appreciate your bringing that to our attention. Thank you, sir. I yield back.

Chairman Walberg. I thank the gentleman. Now, I recognize the gentleman who patiently has waited today, although he is an anxious person to get things done, as we saw yesterday in our markup in our full committee. We appreciate your excitement with that. I recognize my friend, Mr. Lewis.

Mr. Lewis. Thank you, Mr. Chairman. I have to say this committee’s hearings are worth it just for your introductions. I do appreciate that.

I am very, very concerned on where this all is going to lead. I want to take a little bit of a 30,000 foot view, if we might. The DOL regulation a couple of years ago, in 2015, was going to expand the universe of activities that trigger the fiduciary rule, primarily what we are talking about, retirement service providers in this particular case. If you are an asset-based structure, that might be problematic. Commission for transaction would be problematic.

There is sort of an elephant in the living room here that I want to get to, Secretary Campbell, and that is if we are going to go after pay for performance with retirement advisors, why would we stop there? What about the fellow that is selling automobiles? I was in
broadcasting for a number of years, we sold radio ads, they got paid on commission.

If there is a fundamental conflict of interest when I talk to my retirement advisor on which mutual funds or which particular product is best to buy or how he or she gets paid, why would there not be a conflict of interest in every stream of commerce?

Mr. CAMPBELL. Well, actually, I think it’s a valid criticism to say even if you look at the level fee compensation arrangements that DOL is trying to shift everyone to, those still have inherent conflicts. I have an incentive to get as many assets as I can. I might have an incentive to recommend an investment that I think is going to outperform because it builds up the assets on which I get compensated.

You can find a conflict in any of these forms of payment. That is why I think if the issue were how do we make sure people are giving good advice, how do we give advice that’s in the best interest, that’s one debate.

This rule is not really about that. This rule is, as you point out, about how do you get paid and being paid is a proxy for whether your advice is good or not.

Mr. LEWIS. Someone said earlier, they are doing it because they are doing it for pay. I think it was a relatively obscure commentator, an economist now, named Adam Smith, that said it wasn’t for the benevolence of the butcher that the product was brought to market, it was in regard to his or her own interests.

That is the nature of our legal system. A defense attorney might think their client is guilty but we believe in the adversarial system, and we provide them a defense.

When I go buy a product, the salesperson wants to get the highest price, I as the consumer want to get the lowest price. I am a competent consumer. I understand that.

That is why the vast majority of small IRA investors end up opting for commission based service. I am a little, as you can tell, concerned about where this is going to end in this fundamental assumption that most consumers are just plain inept.

Mr. Sossa, on this electronic delivery for disclosures, what are the costs associated with having to fill my mailbox all the time?

Mr. SOSSA. They are significant. Besides the significant part, I'll give you an example. We have almost 100,000 employees in the U.S. One disclosure mailing, and if it's a book, it costs $1.00, that is $100,000 in postage alone. Significant cost.

We pay for it. A lot of employers do pay for them out of their plans, so it actually diminishes their accounts over time.

Actually, for large employers, the real value is the effectiveness of the communications. I'll give you an example. Our hourly plan is really a plan of 400 different retirement plan structures. When I have to send out my SBD, one way to do that is to send out one SBD with 400 different appendices, instead of this massive book for employees to figure out which one applies to them.

If I can do it electronically, I will know who you are, I'll know what plan you are in, not only can I send you the materials that are particular to you, I can also use that as an employee engagement moment, coming back to we do things twice.
Mr. Lewis. Obviously, only bureaucrats can predict the future. What sort of assurances would we have that these savings, which could be what, $200 million, $300 million in some estimates, would be passed on to the beneficiaries by the plan administrator?

Mr. Sossa. For the companies who charge them to the plans, it's automatic. It automatically happens there because they're being charged to the plan. For employers like PepsiCo. that pay for them, we all work through budgets, and that is my communications budget. Now, I have my communications budget, and I have lots of communications I really would rather do or rather do them in a broader context.

I'd love to send out their plan SBD and actually have information to say by the way, you're not participating in the plan, you're not maximizing the match, you've had significant loan deferrals. I can now point you to other resources that we offer, to encourage savings. We provide free access to financial education to all our employees.

Mr. Lewis. My time is up. I thank the panel for their patience today, and I yield back.

Chairman Walberg. I thank the gentleman. It now gives me great pleasure to introduce a very patient individual, the gentleman from Michigan, me, for my questioning time. I appreciate the panel for being here.

Mr. Kais, it has been reported that the median savings, retirement savings for individuals 55 to 64 is about $104,000, and for those 64 to 74, it is $148,000. Incredibly risky to see that miniscule level of savings as the median.

Some have suggested greater access to guaranteed lifetime income products, so I would like your thoughts on that, as well as what steps you would recommend to the committee in lieu of what Mr. Allen said about discussing and talking before we do things. What steps you would recommend to help retirees grow and safeguard their retirement incomes.

Mr. Kais. It's a great question, and it's one that we are very concerned about as well. We support lifetime income products. There's some problems within the industry right now making those portable, so if you leave your employer, it's difficult to move those lifetime annuities out of the plan to a new employer, perhaps. That is something we all need to work on.

We support generally and do provide lifetime income information on participants' statements today, we think it is important for people to see the number differently, what it means, what they are going to have to live on a month by month basis. We think that education is important. We need to encourage catch up contributions, of course, for folks over age 50.

There are a lot of things we can do. I will reiterate that automatic enrollment is still very important, and anything we can do as a community, public and private, to incentivize automatic enrollment is key.

Chairman Walberg. Okay. Thank you. Mr. Campbell, the elephant in the room, and we have talked around it, if DOL does not further delay the Obama administration's fiduciary regulations, should Congress pursue a legislative fix, and should it follow the pattern of what we brought out of the House in committee last year
with the Affordable Retirement Advice Protection Act and the SAVERS Act? Would that be an approach to take?

Mr. CAMPBELL. Well, of course, I'm hopeful that the Trump administration will further delay the rule and handle this as a regulatory matter. I think the principles in the legislation that the House considered last year are very good starting points for legislative approaches to dealing with the fiduciary issue.

One of the distinctions that legislation does that the original Department of Labor regulation also did was draw a distinction between sales activities fully disclosed to sales activities and distinct from advice activity. I think that would be a useful distinction that the legislation makes, that would be something that the Trump administration should consider as well.

Chairman WALBERG. Thank you. Mr. Sossa, we have talked about H.J. Res. 66, my bill that the President signed yesterday. The disparaging comments, I understand. We in no way want to discourage experimentation, new ideas, states being involved in it as well, and our legislation did not do that.

Our legislation simply said if you are going to do it, there have to be safeguards. ERISA ought to be there like it is for everything else. That is what that legislation did.

Could you please explain why allowing states to impose benefit related mandates on employers is dangerous, and secondly, how might these perhaps well-intentioned state laws be counter-productive for retirement savers?

Mr. Sossa. Thank you for that question. It is absolutely paramount, so the ERISA preemption, not just in retirement, in all of our benefit programs, that we as a large employer, a multi-state employer, who has employees who live and work in different states or live and work in different states at the same time, so our ability to provide a uniform retirement program, to bring down our leverage purchasing, we can purchase, we select our investment choices, we use the leverage of large plans to drive down those investment management fees, so there is a value we provide there.

There's a value in communications and how we educate, particularly a blue-collar workforce, and how to prepare for retirement. Being able to do that with one message across our population is paramount.

If we start to break that apart, and each state starts to have a different regulation, employers are going to have to either step out of those areas and lose all that leverage, or ——

Chairman WALBERG. And lose the education opportunities, right?

Mr. Sossa. Lose the education opportunities. Think about the administrative costs now for trying to accommodate for each—-I have a huge sales force who lives in a state but works the whole territory, so which rule applies to them? Is it the rule they work in, the rule they drive through?

I'll go even beyond retirement. Some of the paid sick leave laws that are coming through now are now varying. Even just to administer and track those items are adding significant amounts of costs.

Again, as I said earlier, we all operate on budgets. If that cost is being added here, it's going to come out of something else. We're adding more to the administrative burden. We're adding more to compliance administration. As I said earlier and in my written tes-
timony, it adds no value to the benefit of the employee, and that’s what we’re trying to preserve with the ERISA exemption.

Again, allows us to do it in a way that we can do it uniform within our organization and knowing our population.

Chairman WALBERG. Thank you. Appreciate the testimony of all the witnesses, the responses. This is helpful to us. It has been recorded, and this discussion will continue.

Now, I would like to turn to my friend, the ranking member, for any closing remarks you would like to make.

Mr. SABLON. Thank you very much again, Chairman Walberg. Well, there were certainly areas of agreement and disagreement expressed among members today. There seemed to be bipartisan recognition of the magnitude of the retirement savings crisis confronting our country.

I hope we can work together to find common ground to address it and help increase retirement savings opportunities for American workers.

For that to happen, I believe my Congressional Republicans and the Trump administration will have to take a much different approach than the one they have taken so far. I am hopeful that in the weeks and months ahead, Congress can break from that, because that is what our constituents and the American people expect and deserve from us.

I hope today’s hearing is just the first of several on the subject of retirement security. As my colleagues know, we have a massive crisis in the multi-employer pension plan system that impacts millions of workers and employers. We also must responsibly address the solvency of the Pension Benefit Guarantee Corporation.

These are issues that demand the subcommittee’s attention. Again, I want to thank Chairman Walberg for his courtesy, and all the witnesses for taking the time to be here today on such an important issue. Thank you very much, and I yield back my time.

Chairman WALBERG. I thank the gentleman. Again, I thank you as well. This is an important issue, and I think, Mr. Sablan, there is some bipartisan agreement and correlation that goes on, and we can build on those things. We have seen that happen.

I think our main desire is to make sure that if someone wants to be a big box greeter in their retirement years, that is fine, but we do not want to force them to consider that because of inadequate planning.

We also do not want to simply assume that people cannot do good things for themselves in planning if they have good education. So, where we can foster that opportunity taking place in the private sector, in the workplace, with employers generally who like their employees and want them to go away in retirement years looking back, as my dad looked back on DuPont, for instance, and knew my mother was going to be taken care of well because of what was put together for him over the years of working, that there was a relationship that was developed and it has continued on.

This is something that society has to come together on, and we here on this subcommittee and the full committee have the opportunity to make historical changes for the better to pick up some of the slack that we have let take place, sometimes through wrong-
headed legislation and regulation, that put barriers in the way, and also allowed people to think they could not do it on their own, they could not plan, they could not ask good questions and find good advisors. I do not believe that.

I think a mix of making a good strong playing field out there, finding good partners, giving good incentives and opportunities, will bring to fruition something that we together can be proud of for the future.

Yes, thank you for your involvement in this hearing. I thank the good showing of my subcommittee, although they have all gone on to other places now. This will have an impact.

Without having any further issues to deal with before the committee at this time, we will adjourn.

[Whereupon, at 11:56 a.m., the subcommittee was adjourned.]