



**Statement of
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**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.¹ Therefore, expanding retirement plan coverage among small businesses is critical to enhancing Americans’ retirement security.

Employers play a vital role in helping workers save for retirement. The workplace retirement savings system has succeeded in serving as the preferred method of saving for retirement for millions of workers. With the benefits of saving in an employer-sponsored plan governed by the 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.²

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:

¹ U.S. Small Business Administration, Frequently Asked Questions, June 2016
https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf

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.transamericacenter.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.³

In order to facilitate the adoption of MEPs, Transamerica actively supports two essential reforms. First, compliant employers in a MEP should be protected from liability for the non-compliant acts and omissions of other employers in the MEP and the resulting disqualification of the entire plan under the Internal Revenue Code (the “One Bad Apple” rule). Typical reasons for non-compliance (jeopardizing the qualified status of the plan) include providing insufficient information for discrimination testing and 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

³ 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.⁴ 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.⁵

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

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 balances 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.

Acknowledge 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 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.

⁶ See S.3471