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American Society of Pension Professionals & Actuaries

Statement for the Record For the Senate Special Committee on Aging Hearing on “Opportunities for Savings: Removing Obstacles for Small Business”

Held at 2:00 P.M. on
March 7, 2012

The American Society of Pension Professionals & Actuaries (ASPPA) thanks the Senate Special Committee on Aging (the Committee) for holding a hearing on ways to improve retirement savings opportunities for small business. ASPPA is a national organization of more than 8,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants and attorneys, united by a common dedication to the employer-based retirement system. ASPPA is particularly focused on the issues faced by small- to medium-sized employers, and so is well-qualified to comment on the concerns addressed in this hearing.

There are two myths about small business and retirement savings plans that we would like to address up front:

Myth #1: Service providers are not interested in helping small business set up or operate a retirement plan.

Some providers that focus on the larger plan market may not be interested in small business retirement plans but for decades there have been service providers that make their living by focusing on the small plan market. The proof is in the more than 12 million American workers covered by over 621,000 small business-sponsored retirement plans.¹

Myth #2: It is cost prohibitive for a small business to sponsor a retirement plan.

Providers that focus on efficiently servicing small plans, coupled with dramatic improvements in technology, have made the small 401(k) plan market very competitive. As a result, a small

¹ U.S. Department of Labor, *Private Pension Plan Bulletin: Abstract of 2009 Form 5500 Annual Reports 5* (Dec. 2011), available at <http://www.dol.gov/ebsa/PDF/2009pensionplanbulletin.PDF> (reflecting the number of number of retirement plans and participants in those plans for plans with fewer than 100 participants in 2009).

business can set up and operate a 401(k) plan at a very modest cost. For example, one provider will set up a 401(k) plan for less than \$500, and will administer a plan with up to 10 employees for about \$100 per month, and with little effort required from the employer. The plan start-up credit of up to \$500 per year for three years makes the employer's out-of-pocket cost minimal. Asset charges of less than 1% are also typical for this provider. SIMPLE IRA plans are also available from many providers at very low administrative cost.

If the cost of plan setup and administration, and a lack of willing providers, is not the problem, what is the reason more small businesses do not sponsor retirement plans? In some cases, it is the *perception* that a retirement savings plan will be expensive and complicated to set up and operate, and that the small business owner is too busy with other matters to investigate low cost options. In other cases it is not the administrative cost, but the *contribution requirements* that make a plan too expensive for a small business that is already struggling to survive. As noted in the GAO report, there is also concern about the fiduciary responsibility that plan sponsorship entails.²

ASPPA supports efforts to expand sponsorship of workplace plans by removing real and perceived obstacles to plan sponsorship among small business owners, including the automatic payroll deduction IRA proposal developed by the Brookings-Heritage Foundation Retirement Security Project.³ Multiple employer plans (MEPs) have also recently been promoted as an approach that could address some small business concerns, and the Committee is to be commended for investigating how these arrangements could be helpful to efforts to expand small business coverage.

MEPs have been around for a very long time, usually sponsored by an association for members of that association. More recent activity has included the marketing of "open" MEPS – arrangements where the participating employers' only relationship may be the adoption of the same retirement plan, usually a defined contribution plan. MEPs are being promoted as a way to lower costs and reduce a plan sponsor's potential fiduciary exposure under the Employee Retirement Income Security Act of 1974, as amended (ERISA) by "outsourcing" responsibilities to the MEP sponsor. However, in her testimony, Assistant Secretary Borzi indicated concern about whether or not an "open" MEP is a single plan under ERISA.⁴ (There is no such confusion under the Internal Revenue Code.) Marketing materials from MEP promoters indicate there is also some confusion as to what fiduciary responsibilities are retained by an adopting employer, and what responsibilities fall on the MEP provider (or who that provider might be).

A lack of guidance from the Department of Labor (DOL) on defined contribution retirement plan MEPs has lead to inconsistent views on who can participate in a MEP and who is responsible for

² Statement of Charles A. Jeszeck, Director Education, Workforce, and Income Security, Government Accountability Office (GAO) to the House, Committee on Education and the Workforce, *Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship* 9-10 (Mar. 7, 2012), available at <http://gao.gov/assets/590/589109.pdf>.

³ J. Mark Iwry and David C. John, *Making Saving for Retirement Easier through Automatic IRAs*, Brookings Institute (Jun. 26, 2008), available at http://www.brookings.edu/testimony/2008/0626_ira_iwry.aspx.

⁴ Testimony of Phyllis C. Borzi, Assistant Secretary of Labor, Employee Benefits Security Administration, Before the Special Committee on Aging, United States Senate, available at <http://www.dol.gov/ebsa/newsroom/ty030712.html>.

carrying out fiduciary duties within the arrangement. To facilitate the responsible growth of MEPS, there is a need to clarify the rules and improve the reporting for these plans.

- DOL should formally comment on the status of open MEPs under ERISA, and clarify the fiduciary role of an adopting employer. If necessary, ERISA should be amended to clearly permit employers who share no other common interest to band together in a multiple employer defined contribution plan.
- Reporting requirements for MEPs also should be revised to require that the MEP provider and all participating employers be identified on Form 5500, *Annual Return/Report of Employee Benefit Plan*. Currently, there is no reporting of the employers who are participating in a MEP or of the entity that is marketing and/or providing administrative services to the MEP. Often, the “plan sponsor” reported on the Form 5500 filing is the first employer to adopt the plan, and Internal Revenue Service (IRS) and DOL have no way to know who is marketing or operating the arrangement, and what other employers are involved. To facilitate the growth of new MEPS, the small plan audit exception should be extended to start-up MEPS. For example, a MEP with fewer than 1000 participants should be covered by the small plan audit exception so long as no single participating employer has more than 100 participants.

Finally, to maintain a competitive marketplace for small plan services, legislative proposals to simplify reporting or create new contribution safe harbors for small plans should apply equally to MEPS and to single employer plans. Although MEPs provide efficiencies in theory, in practice a MEP will not necessarily provide better value than a single employer plan just because it is a MEP. Congress should not, therefore, artificially steer employers toward participation in a MEP, as opposed to a single employer plan. For example, Reps. Kind and Reichart’s SAVE Act (HR 1534) includes a special, deferral-only automatic enrollment safe harbor for multiple employer SIMPLE plans. This special deferral-only safe harbor should also be available for single employer 401(k) arrangements.

Thank you for the opportunity to submit these comments. ASPPA would be pleased to work with the Committee to further develop proposals to expand small business participation in the private employer-based retirement system.