Statement Presented to
The U.S. Senate Special Committee on Aging

Hearing on

Opportunities for Savings: Removing Obstacles for Small Business

March 7, 2012

Good afternoon, Chairman Kohl, Senator Corker and Members of the Committee. I am Bryan Fiene, Senior Vice President, Robert W. Baird & Co. Incorporated ("Baird").

I appreciate the opportunity to provide this written testimony in connection with the hearing of the U.S. Senate Special Committee on Aging regarding small-employer challenges to retirement plan sponsorship. As a financial advisor with Baird, I have served dozens of small and medium sized retirement plans with thousands of participants around central and southern Wisconsin for 19 years. I am a designated Qualified Plan Financial Consultant with the Association of Pension Professionals & Actuaries. I work with many small businesses, owners and executives. My firm, Robert W. Baird & Co., was established in 1919 and is headquartered in Milwaukee Wisconsin. We have more than 100 office locations in the United States, Europe and Asia, including an office with two retirement plan teams in Nashville, Tennessee. Baird has a culture where clients come first, integrity is irreplaceable and how we succeed is as important as if we succeed. Those quotes were delivered to the desks of every associate in the firm years ago and they still sit on my desk. I am personally proud to be an associate at this great Wisconsin-based company which serves small-business clients all over the United States. My testimony, however, will focus on my personal observations and experiences as a financial advisor to small businesses while building a retirement advisory plan business within Baird. My testimony will represent my own opinions and not those of Baird.

As a Wisconsin resident and a professional, I'm proud of my state. We are home to several dozen world-class companies like Harley Davidson, Briggs & Stratton, Johnson Controls, Rayovac, Regal Beloit, Rockwell Automation, Snap On, Mercury Marine and Kohler. In Senator Corker's home state of Tennessee, they have Autozone, Dixie, FedEx, Forward Air, Fred's, Harrah's, HCA, King Pharma, UnumProvident and many more. All these wonderful companies have one thing in common: each started as a small business. We need to encourage all small businesses to succeed so they too can grow up to be household names and employ thousands of American workers. We welcome this committee's concern with trying to encourage small-businesses to sponsor retirement plans for the benefit of their present and future employees.

My testimony is intended to focus on the following points:

First, there are many reasons driving small employers away from offering retirement plans.

Second, Federal and state government agencies do not effectively help small businesses understand whether and how to offer a plan.

Third, financial advisors can play a critical role in helping small employers cope with the challenges of adopting and maintaining a plan.

Fourth, for many small employers seeking to establish a plan, Multiple Employer Plans (MEPs) can be a very attractive option, particularly as a "starter plan."

Fifth, Congress and the regulatory agencies should further facilitate the adoption of MEPs.

Before persistently high unemployment set in, businesses needed strong retirement plans to recruit and retain good people. Now, all they have to do is put an ad in the paper. This dynamic directly relates to the perceived costs and benefits of starting up and keeping a retirement plan in place and intact. In short, many small employers do not offer retirement savings plans simply because it is too expensive or too time consuming. Small-business owners need a strong incentive to start a plan and the tax savings for the owners themselves usually provide that incentive. However, when the small-business owner is losing money or cannot contribute as much as he wants, that incentive tends to go away. The regulations related to starting and operating a plan are also a huge disincentive for a small-business owner. I had a plan ready to start a number of years ago but the owner decided not to start the plan when he learned that he had to sign as trustee and was personally responsible for carrying out his fiduciary duties. He had no interest in learning about the potential liability either. These folks are so busy with their business, they simply can't take the time to learn how to operate a plan.

The recent economic downturn, with its associated tightening of credit, put a major strain on small-business owners. When they cannot access credit and need cash, small business owners often look to their largest existing cash pools, which are typically their retirement plans. However, if that small-business owner is under retirement age and cannot take out a loan against the assets in a retirement plan, he or she cannot directly access funds without terminating the plan and ending the benefit for all of the company's employees.

Faced with difficult choices, many small-business owners have cut employer contributions either for immediate survival or to fortify their balance sheets in case the economic situation worsens. Unfortunately, this is also detrimental to participants, but many small businesses are left with few other options, save cutting hours or pay, laying people off or raiding their own assets. It often comes as a surprise to employers that they cannot access "their" money without dismantling their business' retirement plan. In fact, many things come as a surprise to small plan sponsors. You see, they are already working long hours just to keep their companies going or trying to grow them. They look at things at a very high level, asking: "What will this do to enhance my business?" and "What is my risk in implementing it?"

As for starting a new plan, small-business owners will look at the risk versus the reward just as one would with any investment. Often they will seek out a trusted advisor to help navigate this decision as they would any other related to their businesses. They will probably start with a financial advisor, accountant or lawyer. They may also ask friends and peers if they are happy and how much of a hassle their plans are.

I personally don't know of anyone that has ever gone on their state website or the Department of Labor website for advice on starting a new plan. Even a sophisticated small-business owner will simply not have the expertise or time to understand all of the information on these websites. On the U.S. Department of Labor (DOL) website there are 92 links to information on small business plans alone.

I looked at the Wisconsin Department of Workforce Development website and, after 10 pages, found no information on how to start a new small business plan. I also looked at Tennessee's Department of Economic & Community Development website, and I found some very interesting stats about Tennessee and the fact that Tennessee is doing a great job getting small companies started. But again, nothing to help a small business owner in Tennessee understand how to start a plan.

Moreover, the information is often presented in a manner that suggests establishing a plan would likely be futile. The Department of Labor web site states that: "Experts estimate that Americans will need 70 to 90 percent of their preretirement income to maintain their current standard of living when they stop working." But many small-business owners do not expect themselves or their employees ever to be able to save a sufficient amount of funds for retirement, so the prospect of starting a plan for an uncertain goal is not a priority. As an example, if a person making $100,000 contributes $17,000/year (which is the current maximum deductible amount) for 25 years, at a 5% rate of return, the person would have just over $900,000 saved, which again at 5% would yield them about $45,000 per year in income, right around half of what the DOL website says they need. You might suggest that they take advantage of an IRA to supplement that contribution but the deductibility starts to phase out at $92,000. They could do a Roth but they would have to have the cash to do it. If I take a $100,000 annual compensation and subtract $17,000 for plan contributions, $18,600 for federal tax not counting payroll tax, $6,645 for Wisconsin State tax, $5000 for property tax, $12,000 for health insurance for the family, $24,000 for mortgage payments, $5000 for life, home and car insurance, $3,600 for a car payment, $6,000 for food, $3600 for clothes, $2,400 for phone, $1,200 for cable and Internet, $3600 for utilities and $5000 for gas, then the individual has a net *deficit* of $3,445 per year – and that is not sustainable. The numbers I used are not exact, but you get the picture. And with our college kids graduating with mountains of debt, they have a very hard time contributing anything to their plan for years. Participants simply can't do it on their own; they must have the help of their employer and that employer needs to see the plan as a huge benefit and not a huge headache or risk to him. If we add in an annual $3,000 contribution by the employer, the end balance nets an income of 53% of salary, still far short of 70-90% but if he can save outside the plan, get a higher rate of return or lower his cost of living, he can make it.

Of course, I would be remiss if I did not commend Congress and the Department of Labor for many recent innovations that help plan sponsors. We now have portability for participants, automatic enrollment, Roth, Safe harbor, some fiduciary relief and clarification on education policies. These improvements have made a huge difference in getting to the ultimate goal of retirement success for workers.

Given the tremendous challenges employers face, alongside the absence of clear, accurate, and encouraging information from government agencies, it has been my experience that the vast majority of small business owners who decide to offer a retirement plan rely on an outside advisor. The role of a financial advisor to small-employers is critical. I help the small-employer understand the advantages of saving on a tax deferred basis through a qualified retirement plan. This understanding at a personal level is critical. I also help small-business owners to: understand plan provisions, evaluate fees and other considerations, and determine the scope of fiduciary liabilities and the duties for which they are responsible. I also work to find an appropriate plan vendor and administrator with a proven track record structuring and offering small plans and providing other services small-employers need. Plan vendors and administrators are essential to removing the overwhelming burden on the small-employer in maintaining a plan, including providing plan statements and delivery to participants, conducting discrimination testing, preparing Form 5500, plan notices and other compliance matters.

Even with the support of a financial advisor, a stand-alone plan may not be a feasible option for a small-employer due to the cost and administrative burdens outlined above. Unfortunately, even if the small-business owner is willing and interested in establishing a plan, oftentimes advisors and vendors are not willing to work with them.

The field of vendors willing to sell stand-alone plans to small employers has shrunk in recent years due to the lack of profitability in offering these plans. Most financial advisors have also backed away from this business for the same reasons and the increased fiduciary responsibility involved. Advisors and record keepers typically need a base of assets in a plan large enough to make it profitable. Start ups or small plans simply don't have that. For example, when a plan is started, an advisor typically incurs some marketing costs and may put in as many as 20-30 hours of work helping the sponsor identify the right vendor, compare costs, decide on plan provisions, fund lineups, create investment policy statements and conduct enrollment meetings. Then there are travel costs. Unless the sponsor is prepared to pay the administrative costs of the plan, the employees must bear those costs, which can range between $500-$1,000 for start-up costs and $1,500-$3,000 per year for ongoing record keeping and tax filings. If the business needs the advice of an attorney, mailing costs for notices, wages for the person that administrates the plan at the business or fiduciary insurance, those costs can be higher.

I had a client that called me a number of years ago because, he said, even with the market up, nobody was making any money on their plan. When I reviewed it, I could see that the participants were being asked to incur all the plan fees as is standard procedure for the larger plans. However, given the size of the plan and the average account, participant accounts were being charged about 4% in addition to the fund costs of about 1.4%. Such a structure makes it pretty hard to make money and as a general matter, advisors would not suggest a plan in which the benefit to participants is minimal relative to the plan costs. So the choice of the advisor is to either lose money for several years on the plan or simply choose not to work with those plans.

Defined contribution multiple employer plans (MEPs) could go a long way to address this serious issue. I think that giving small businesses the ability to hand over the vast majority of those administrative responsibilities to a vendor that can handle them through an MEP would be a great relief. Benefits would include the economies of scale you get from bundling plans, as well as the reduced costs and additional features enjoyed by larger plans.

MEPs provide an excellent cost-effective alternative to stand-alone plans for small employers. An MEP is a single plan maintained by an MEP sponsor and one or more unrelated employers ("adopting employers"). Under an MEP, many small-employers can join together to achieve economies of scale and advantages with respect to plan administration, making retirement plans much more affordable and easier to manage. A typical MEP arrangement allows for the same essential features and benefits of a 401(k) plan, such as higher deferral limits and employer contributions, and offers both the small employer and the plan vendor the ability to achieve economies of scale by spreading the costs of administering the plan among all of the employers participating. The MEP structure also offers flexibility for small employers to easily graduate to a stand-alone plan when they are ready.

I have had extensive experience dealing with such plans for Wisconsin employers. I worked with Wisconsin farm co-ops in the 1990's to set up some of the first MEPs in Wisconsin. And my experience bears out that MEPs are useful "starter plans." Once these co-ops grew large enough, we decoupled their plans from the MEP and transitioned them to successful stand-alone plans.

However, more can be done to facilitate the adoption of MEPs by other small employers.

I submit the following for consideration:

First, I recommend enactment of the following reforms to the current MEPs covered in S. 1557, introduced by Senators Bingaman and Kerry:

1. Implementing safe harbors from liability for the MEP sponsors and adopting employers;
2. Restricting the responsibility of an adopting employer for the delinquent obligations of another MEP employer; and
3. Further simplifying the reporting and disclosure obligations of MEP sponsors and adopting employers. These reforms have also been included in some form in H.R. 1534, sponsored by Representative Ron Kind, and H.R. 4050, sponsored by Representative Richie Neal.

Second, I recommend that the definition of an MEP plan sponsor be clarified to permit an MEP to consist of unaffiliated employers with no other relationship to each other. Employers not bound by the traditional commonality factor found in farm co-ops or professional employer organizations would benefit from the economies of scale and expertise in joining a MEP. Existing ERISA protections would apply to such plans, just as they apply to plans maintained by large affiliated employers, to ensure that benefits are paid to participants and beneficiaries and that plan sponsors have the same responsibilities and liabilities.

The quality and capabilities of plan vendors have grown dramatically in recent years and costs have actually come down due to competition. With large and well-capitalized providers in this space, I would expect to see things like start-up costs go away. I would also expect clearly defined duties for plan sponsors, the highest quality and most competitive investment options and consistent reductions in prices as plans grow.

In conclusion, I'd like to commend Chairman Kohl, Ranking Member Corker and other members of the committee for their attention to and consideration of this important issue, and I appreciate the opportunity to share my professional experience and opinions on the matter. I strongly believe that removing the obstacles that currently prevent many small employers from adopting savings plans will be beneficial to those businesses and their employees.