



Written Testimony of

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**“Opportunities for Savings:
Removing Obstacles for Small Business”**

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Introduction

Chairman Kohl, Ranking Member Corker, and members of the Committee, thank you for your invitation to discuss with you the challenges facing small employers in extending retirement plan coverage to their workers.

I am John J. (“Jamie”) Kalamarides, a senior vice president at Prudential Retirement, where I lead the Institutional Investment Solutions business, which includes Prudential Bank & Trust, stable value funds, institutional retirement income products and institutional investments. Prudential’s experience in the retirement industry dates back to 1924. Today, Prudential Retirement supports over 6,000 defined benefit and defined contribution retirement plans, and covers nearly 3.6 million defined benefit and defined contribution plan participants and annuitants. As of December 31, 2011, Prudential Retirement’s account values totaled \$229.5 billion.

I would like to begin my testimony by commending the Committee for its interest in what I will refer to as the “retirement coverage gap” – a gap that is in large part due to the concerns of many employers, particularly small businesses, about the costs and liabilities associated with maintaining stand-alone retirement programs for their employees. I would also like to commend and thank the Chairman for his many years of dedication to addressing issues critical to millions of today’s workers as they strive to save and prepare for retirement.

My testimony today will focus on Multiple Employer Plans – or MEPs– a structure that enables small business owners to pool their resources in a single plan and enjoy the efficiencies and benefits typically limited to large employers and collectively bargained multiemployer plans.

To supplement to my testimony, Prudential is releasing a white paper entitled *Leveraging Multiple Small Employer Plans to close the Retirement Coverage Gap*, advance copies of which have been provided to the Committee. The U.S. Chamber of Commerce, of which Prudential is a member and which has reviewed and is supportive of my testimony, will be releasing its own white paper addressing the challenges facing retirement plan sponsors in the 21st Century and will include proposed solutions, like MEPs, to encourage retirement plan sponsorship and expand employee coverage.

In my remarks today, I would like to address the following topics:

- The scope of the retirement coverage gap;
- The reasons for the gap - challenges facing small employers in offering retirement plans;
- Multiple employer plans - what they are and how they can help close the gap; and
- Recommendations for expanding access to MEPs.

The “Retirement Coverage Gap”

More than 51 percent of today’s workers, or 78 million individuals, have no access to a workplace-based retirement plan¹ – this is the “retirement coverage gap.”

This “coverage gap” is preventing nearly half of the American workforce from beginning to systematically save and invest for retirement at the workplace. According to a recent EBRI survey, 58 percent of workers who do not participate in a retirement savings plan at work have saved less than \$10,000,² significantly lower than the average defined contribution plan account balance of \$59,000,³ which itself is an inadequate retirement saving for most Americans. Left unaddressed, the coverage gap for workers without retirement plans will result in far too many individuals entering retirement without sufficient savings to sustain their pre-retirement standard of living.

The lack of access to a workplace retirement plan is most acute among smaller employers – this is best exemplified by a table prepared by EBRI⁴ and included as an exhibit in the white paper accompanying my testimony. Nearly two-thirds of workers employed by private employers with 100 or more employees have access to workplace retirement plans, while only 36 percent of those who work for employers with ten to 100 employees have access. Availability is reduced further as employee numbers decrease, with only 18 percent of those who work for employers with ten or fewer employees having access.

Why the gap? Challenges for small businesses

Many small employers are reluctant to offer retirement savings plans because of concerns about costs, administrative complexities and fiduciary liability.

Over the years, a variety of legislative and administrative efforts have been directed toward closing the coverage gap with simplified retirement savings vehicles, such as SEPs, SIMPLEs and voluntary payroll deduction IRAs. Moreover, despite the commendable efforts by the Employee Benefits Security Administration to educate small employers and their service providers about their retirement plan options, the coverage gap remains significant.

¹ Employee Benefit Research Institute, “Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2010, Issue Brief No. 363, October 2011, p. 9.

² Employee Benefit Research Institute, “2011 Retirement Confidence Survey Fact Sheet #2,” March 2011, p. 4.

³ As of December 31, 2009. Employee Benefit Research Institute, “401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2009,” Issue Brief No. 350, November 2010, p. 11.

⁴ Employee Benefit Research Institute, Issue Brief No. 363, October 2011.

Clearly, attempting to understand one's obligations under ERISA and liabilities as a plan administrator and plan fiduciary can be daunting, even for the most sophisticated among us.

Small business owners are challenged with understanding a plan sponsor's obligations and costs associated, among other things, with:

- Summary plan descriptions and quarterly individual benefit statements for plan participants;
- Annual financial report filings with the Federal government, and perhaps engagement of a qualified independent public accountant to review the plan's books and records;
- Prudent selection of plan service providers – including analysis of costs and potential conflicts of interest, as required by the Department of Labor's new regulations under section 408(b)(2); and
- Potential liabilities for failing to make timely disclosures, file timely reports and prudently carrying out responsibilities with respect to the plan.

While important and useful information, gaining such understanding – or having to hire an ERISA expert to assist with these responsibilities and obligations – will be a challenge, financially and otherwise, for most small employers and serve as a disincentive for far too many to offer any form of retirement savings plan to their employees.

We do not propose eliminating these important responsibilities; rather, we propose consideration of a Multiple Employer Plan and a standardized plan framework under which these responsibilities would not be the sole obligation of the small employer.

This framework would, in principle, be similar to the approach the Administration appears to be supporting in connection with automatic IRA options. That framework appears premised on adoption of a simple "model" plan structure with pre-defined investment options, with respect to which employers would have little or no administrative or fiduciary responsibilities beyond the timely remitting of employees' contributions. We believe these principles can – and should – be extended to MEPs.

Multiple employer plans -how they can help close the gap

In general, an MEP is a plan structure that enables two or more employers – unrelated by ownership or control – to join a single plan. Typically, MEPs are sponsored by employer associations and other affinity groups for their members.⁵

MEPs can offer employers, particularly small employers, the opportunity to reduce costs and responsibilities otherwise required by stand-alone retirement plans. MEPs afford employers the ability to achieve economies of scale not otherwise possible with a stand-alone retirement plan, including the ability to hire the expertise necessary to both protect participating employees and reduce the personal financial risks of participating employers. According to a Deloitte Consulting study, which is illustrated in our white paper, the average expense of a retirement plan for a small employer with fewer than 100 employees is 132 basis points. If 100 of such small employers were to pool their assets together in an MEP, the expenses could be reduced to an average of 50 basis points.

We, at Prudential, further believe that, while the MEP structure is an attractive starting point for closing the retirement coverage gap, the structure and the benefits for small employers can be further enhanced with the development of a “model” plan; a plan designed to simplify administration, reduce costs, increase participation and enhance portability. Along with others, we have referred to this simplified MEP design as a Multiple Small Employer Plan – or MSEP.

Our **Multiple Small Employer Plan** framework, as noted in the accompanying white paper, would, among other things, include:

- A model plan document, approved by the Internal Revenue Service (IRS), which would provide uniformity and increase portability among recordkeepers and other service providers;
- Automatic enrollment of participants and automatic escalation of contributions to increase employee participation and retirement savings;
- A Qualified Default Investment Alternative (QDIA) for defaulted participant contributions;
- Adoption of a \$10,000 annual contribution limit, with adjustments by the IRS to reflect cost-of-living changes. Catch-up contributions would not be permitted;

⁵ “Multiple employer plans” should not be confused with “multiemployer plans.” “Multiemployer plans” are plan maintained pursuant to one or more collective bargaining agreements negotiated between the union and employer plan sponsors. *See* ERISA section 3(37), 29 CFR § 2510.3-37. Unlike multiemployer plans, multiple employer plans” are not required to be maintained pursuant to a collective bargaining agreement and typically are not.

- Prohibiting participant loans and restricting hardship distributions to those falling under existing IRS safe harbor hardship standards in an effort to reduce leakage and administrative costs; and
- Permitting contributions to be rolled into an IRA or other qualified retirement plan upon separation from employer to better ensure the availability of the funds at retirement.

Whether the discussion is about MEPs or MSEPs, we believe the benefits of a multiple employer plan type retirement structure are clear, but the rules in place today unnecessarily restrict and inhibit the availability and use of MEPs for many employers.

Recommendations for expanding access to multiple employer plans

If MEPs are to serve as a decisive tool for closing the retirement savings gap, we believe a combination of legislative and administrative (regulatory or interpretive) actions may be required to promote and foster MEP offerings and growth.

Specifically, we recommend consideration of the following:

- **Expand standards for sponsorship of MEPs.**

Without further clarifications from the Department of Labor, it appears that sponsorship of MEPs may be limited to employer associations in which member employers have a commonality of interest and some form of participation in the association, as determined by the Department on a case-by-case basis. Such organizations have not been successful in closing the retirement coverage gap, because of the limited number of associations and their limited scope. We believe that, if MEPs are to play a role in closing the retirement coverage gap, the organizations or entities permitted to sponsor MEPs must be broadened.

We believe there may be various approaches to expanding permissible MEP sponsorship without increasing risk to small employers and their employees or increasing the need for oversight by the Department of Labor. In this regard, we have included, in an attachment to my testimony, one such approach which follows a framework already reviewed and adopted by the Department.

- **Eliminate or limit fiduciary and plan administrator responsibilities attendant to participating in an MEP.**

We believe a safe harbor or similar provision is needed to clarify and limit the responsibilities and liabilities of employers participating in MEPs. In this regard, we believe the use of an approved “model” plan document may serve as the appropriate vehicle for setting forth responsibilities and liabilities of the parties responsible for the MEP. Among other things, such a “model” would have an

identified plan fiduciary who would carry out the day-to-day administration of the plan, as well as oversee the continued prudence of the MEP's designated investment options, the engagement of an independent qualified public accountant, and the filing of an annual report and accountant's opinion with the Department of Labor and Internal Revenue Service. Employer liability would be limited to making timely employee contributions to the plan.

- **Eliminate employer and plan liability (e.g., disqualification) for non-compliance with tax laws as a result of a non-compliant participating employer.**

We believe the current ambiguity should be removed regarding one participating employer's liability for the acts of another. In other words, the liability of participating employers should be several, not joint and several. Today, the possibility of becoming liable for the acts of another participating employer in connection with an MEP is a major concern to employers considering MEP participation.

- **Eliminate non-discrimination testing.**

Application of these tax rules, particularly for small employers, adds complexity, costs and risks that may discourage employer participation, as well as reduce retirement savings, from which such costs are assessed. Again, we believe that the adoption of a "model" plan - one that includes automatic enrollment, automatic escalation of contributions, contribution limits and limits on withdrawals - would eliminate the need for plan qualification testing.

Conclusion

The retirement savings, and thus the retirement readiness, gap between American workers who have access to workplace plans and those who do not, especially those who work for smaller employers, is significant.

We believe the response to this challenge should be a Federal solution, not a State reaction that competes in or replaces the competitive marketplace of retirement plan products and services.

We believe expanding the availability and attractiveness of Multiple Employer Plans with a Federal solution would significantly increase the likelihood that millions more Americans will have access to workplace retirement savings plans and, in turn, an increased opportunity to enjoy a secure retirement.

Complementing the work of this Committee, I should note the work of Congressmen Ron Kind and David Reichert in introducing their Small Business Add Value for Employees Act (SAVE Act), which would foster the growth of Multiple Small Employer Plans, and the work of Congressman Richard Neal, who recently introduced the Retirement Plan Simplification and Enhancement Act of 2012, which, among other things, would also strengthen MEPs.

We welcome the opportunity to work with the Committee on these important issues.

This concludes my testimony, I would be happy to answer questions.

Attachments:

1. Proposal for Expanding MEP Sponsorship
2. *Leveraging Multiple Small Employer Plans to close the Retirement Coverage Gap, Prudential Retirement*

Proposal for Expanding MEP Sponsorship

Problem:

When multiple employers are involved with a non-collectively bargained plan, the current rules applicable to determining whether that plan will be treated as a single employer plan or a separate plan with respect to each participating employer generally turns on whether the sponsor is a bona fide group or association, with respect to which member employers have a commonality of interest (such as being in the same trade or business), participate in the organization, and directly or indirectly exercise control over the plan (in form and substance); all of which, according to the Department of Labor opinions, must be determined on the basis of all the facts and circumstances.

Proposed Solution:

We believe the Department has the authority to recognize entities, in addition to employer associations, as “acting directly or indirectly in the interest of an employer” for purposes of sponsoring a pension plan. In the case of MEPs, we believe one approach to expanding the availability of MEPs would be to recognize as permissible MEPs sponsor entities (primarily financial institutions) that are eligible to serve as a trustee or issuer of an individual retirement plan within the meaning section 7701(a)(37) of the Internal Revenue Code.

We believe, consistent with the Department’s own findings, that such entities would, as plan sponsors and fiduciaries, offer plan-maintenance safeguards that would enhance the protections available to small employers and their employees, as well as minimize the need for administrative and enforcement oversight by the Department. In this regard, note that, in framing its abandoned plan regulation (29 CFR § 2578.1), the Department of Labor was comfortable vesting considerable authority and control over retirement plan assets in such entities when terminating an abandoned pension plan. In explaining its decision to limit such authority to those trustees and issuers, the Department indicated that, given the authority and control over plans vested in such entities under the regulation, entities must be “subject to standards and oversight that reduce the risk of losses to the plans’ participants and beneficiaries,” and the Department concluded that “the standards applicable to such trustees and issuers are well understood by the regulated community and the Department is unaware of any problems attributable to weaknesses in the existing Code and regulatory standards for such persons.” (77 Fed Reg 20821, April 21, 2006).

For the same reasons, we believe consideration should be given to expanding MEP sponsorship to include such trustees and issuers. Moreover, if it was determined to be helpful to monitoring and enforcement, an MEP sponsorship registration could be developed and required to be filed with the Department of Labor, to be supplemented each year with the filing of the MEP’s annual return/report (Form 5500).