TRANSAMERICA RETIREMENT SERVICES

MULTIPLE EMPLOYER PLANS

An Opportunity for Expanding Retirement Plan Coverage

A White Paper Prepared by Transamerica Retirement Services[1]

Executive Summary

A key to successfully increasing retirement plan coverage in America is to target small businesses by offering cost-effective retirement plan solutions that meet their unique needs. Compared with larger companies, small businesses have a myriad of unique retirement plan-related needs, and very different concerns about the cost of administering a retirement plan.

Multiple employer plans (MEPs) offer great potential as a savings option for small-business owners who want to provide their employees the same flexible features and benefits of a traditional 401(k) plan — such as a unique vesting schedule, full 401(k) deferral limits, a profit sharing feature and/or a form of employer contributions — but may not have the internal expertise to manage a stand-alone plan.

This paper provides an analysis and specific recommendations for the enhancement of defined contribution MEPs to facilitate their usage by employers who do not sponsor a retirement savings plan for their workers.

The United States Congress is currently studying potential workplace retirement savings options for employers — mainly small businesses — that do not have the internal expertise or staff to offer a stand-alone retirement plan, or those who are daunted by the obligations of plan sponsorship. However, care should be taken to ensure that any legislative proposals complement, rather than detract from or disrupt, the current employer-sponsored retirement plan system.

Employer-sponsored plans (whether a SIMPLE or SEP, a 401(k) or other defined contribution plan) offer employer oversight, fiduciary protections, protection from creditors, more robust contribution levels, and in many instances, significant employer contributions.

Therefore, all retirement savings proposals for small businesses short of a stand-alone employer-sponsored plan should be considered as “starter” savings options. Preference should be given to those starter savings options that facilitate a smooth transition to a stand-alone employer-sponsored plan. Starter savings options that do not permit a smooth transition to employer-sponsored plans, such as the auto IRA, have an important role, but should be limited in their use. They do not provide employees the same benefits as an employer-sponsored plan and they pose the risk of undermining and/or cannibalizing the current system.

This paper provides an analysis and specific recommendations for the enhancement of defined contribution multiple employer plans (MEPs) to facilitate usage of MEPs by employers who do not sponsor a retirement savings plan for their workers. MEPs offer great potential as a starter savings option for small business owners

Relevant Terms Defined

Multiple Employer Plan (MEP)
A retirement plan for businesses that typically have a common interest, but are not commonly owned or affiliated

Multiple Employer Plan Sponsor (MEP Sponsor)
The organization that sponsors and maintains the MEP and master contract under which adopting employers may adopt a retirement plan; An example of organizations that may sponsor an MEP include a professional employer organization (PEO), or a professional association

Adopting Employer
The term used to describe an employer that participates in an MEP

[1]Transamerica Retirement Services ("Transamerica"), a marketing unit of Transamerica Financial Life Insurance Company ("TFLIC"), 440 Mamaroneck Avenue, Harrison, New York 10528, and Transamerica Life Insurance Company ("TLIC"), 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499, and other TFLIC and TLIC affiliates, specializes in the promotion of retirement plan products and services. TFLIC is not authorized and does not do business in the following jurisdictions: Guam, Puerto Rico, and the U.S. Virgin Islands. TLIC is not authorized in New York and does not do business in New York.

who want to offer their employees the same features and benefits of a 401(k) plan, such as higher deferral limits and employer contributions, but are not yet ready to sponsor a stand-alone plan. The MEP structure also offers flexibility for small business owners to remain in this plan construct or to easily graduate to a stand-alone plan when they are ready.

Recommended reforms outlined in this paper include: (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.

First, however, it is useful to provide background information on small businesses and MEPs. This paper is divided into the following parts:

1. *Role of Small Business in Providing Workplace Retirement Benefits, Small Business Retirement Plan Coverage*
2. *Multiple Employer Plans: An Opportunity for Expanding Plan Coverage (includes a primer on current regulation of multiple employer plans)*
3. *Professional Employer Organizations: An MEP Success Story*
4. *Recommendations for Simplifying and Improving MEP Regulation to Increase Their Appeal*

Role of Small Business Employers in Providing Workplace Retirement Benefits

Employer-sponsored retirement savings plans play a critical role in facilitating employee savings and making the process easy and attractive for American workers. The benefits of saving in an employer-sponsored plan (e.g., investment education, the potential for employer contributions, fiduciary oversight, protection from creditors), combined with the convenience of automatic payroll deduction, make Americans more likely to save for retirement by participating in an employer-sponsored plan than by contributing to an individual IRA.

The Transamerica Center for Retirement Studies[2] Eleventh Annual Transamerica Retirement Survey ("Transamerica Survey")[3] found that the majority of workers who are offered an employer-sponsored 401(k) or similar plan cite their accounts as their expected primary source of income at retirement (53%). By comparison, of those workers who are not offered an employer-sponsored plan, the most frequently cited response was Social Security (31%).

The Transamerica Survey found that 77% of workers who have access to workplace retirement plans offered to them participate in their company's defined contribution retirement plan. By comparison, the Investment Company Institute found that only 14% of U.S. households contributed to an IRA in 2007.[4]

Equally significant, the Transamerica Survey found that workers who are offered a company-sponsored retirement plan are more likely to save for retirement outside of work (66%) than those who are not offered a plan (43%).

The role of employers in providing retirement savings plans to their employees has long been supported by public policy and the work of the U.S. Congress in enacting tax incentives both for employers to sponsor retirement plans for their employees and for employees to accumulate long-term savings through those plans. The current tax system also helps to ensure that these savings will be there for retirement by placing restrictions

[2]The Transamerica Center for Retirement Studies® ("The Center") is a non-profit corporation and private foundation. The Center may be funded by contributions from Transamerica Life Insurance Company and its affiliates or other unaffiliated third-parties. For more information about The Center, please refer to **www.transamericacenter.org.**

[3]11th Annual Transamerica Retirement Survey. This survey was conducted within the United States by Harris Interactive on behalf of Transamerica Center for Retirement Studies. The worker survey was conducted online between December 3, 2009 and January 18, 2010 among 3,598 full-time and part-time workers. Potential respondents were targeted based on job title and full-time and part-time status. Respondents met the following criteria: All U.S. residents, age 18 or older, full-time workers or part-time workers in for-profit companies, and employer size of ten or more. Results were weighted as needed for the number of employees at companies in each employee size range. No estimates of theoretical sampling error can be calculated. The employer survey was conducted by telephone between December 1, 2009 and January 8, 2010 among a nationally representative sample of 601 employers. Potential respondents were targeted based on job title at for-profit companies and met the following criteria: 1) business executives who make decisions about employee benefits at his or her company; 2) employ ten employees or more across all locations. Results were weighted as needed using weighting targets from the Dun & Bradstreet database to ensure each quota group had a representative sample based on the number of companies in each employee size range. A full methodology is available at **www.transamericacenter.org.**

[4]Investment Company Institute, The Role of IRAs in U.S. Households' Saving for Retirement, 2008, January 2009

on pre-retirement distributions, imposing tax penalties for most early withdrawals, and providing significant protection from the claims of creditors.

Small Business Retirement Plan Coverage

The Transamerica Survey found that 82% of full-time workers are offered a plan by their employers compared to only 43% of part-time workers. The survey also found that, of small business employers who did not sponsor a defined contribution plan, 89% are not likely to offer a 401(k) in the next two years, with a frequently cited reason being concerns about cost (34%).

Small businesses have a myriad of business circumstances, unique retirement plan-related needs, and concerns about cost. A key to successfully increasing plan coverage rates is to offer a variety of cost-effective solutions, within the context of the existing system and available plan types, which will address the needs and concerns of the small business owner.

Pertinent Facts About Small Businesses:

- Small businesses with less than 500 employees represent 99.7% of the total firms and just over half of all private sector employees in the United States.
- Small businesses generated 64% of net new jobs over the past 15 years and supply more than half of the U.S. non-farm private gross domestic product.[5]

Given the prominent role that small businesses play in the U.S. economy, it is vital to encourage small business owners to sponsor retirement plans and help the small business workforce adequately prepare for retirement.

Multiple Employer Plans: An Opportunity for Expanding Plan Coverage

For small businesses in which a stand-alone 401(k) plan is not feasible, defined contribution multiple employer plans (MEPs) offer an attractive and cost-effective alternative.

A multiple employer plan is a single plan that is maintained by an MEP sponsor and one or more unrelated employers (adopting employers). A typical MEP arrangement allows for the adopting employers to choose from a variety of plan design options — features such as vesting, eligibility, and matching or profit sharing contribution are just a few. To the extent that the adopting employers do not deviate from the MEP design options, the MEP sponsor bears nearly all of the fiduciary responsibility for the plan. In addition to large corporations, common sponsors of MEPs include professional employer organizations (PEOs), human resource outsourcing organizations, franchises, co-ops and associations.

By design, an MEP is a plan maintained by two or more employers who are not related under Internal Revenue Code (IRC) sections 414(b) (controlled groups), 414(c) (trades or businesses under common control), 414(m) (affiliated service groups) or 414(o) (separate organizations and other arrangements required to be aggregated). Employers related under IRC sections 414(b), (c), (m), or (o) are treated as a single employer for determining the number of employers maintaining a multiple employer plan. MEPs are governed by the rules in IRC 413(c).

Under the current regulations, the structure of MEPs offer cost efficiencies for adopting employers to enjoy many of the features and benefits of a 401(k) plan, such as flexibility in plan design and higher deferral limits, without having to sponsor a stand-alone plan.

Specifically, in an MEP arrangement, service for eligibility and vesting is calculated as though all employees under the MEP are employed by all of the employers maintaining the MEP. For purposes of calculating plan contributions, an employee's compensation from all employers maintaining the MEP is taken into account.

However, for testing purposes (coverage, ADP, ACP, 401(a)(4), top-heavy, etc.) and adopting employer

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[5]Source: U.S. Dept. of Commerce, Bureau of the Census and International Trade Admin.; Advocacy-funded research by Kathryn Kobe, 2007 (**www.sba.gov/advo/research/rs299tot.pdf**) and CHI Research, 2003 (**www.sba.gov/advo/research/rs225tot.pdf**); U.S. Dept. of Labor, Bureau of Labor Statistics.

Professional Employer Organizations: An MEP Success Story

MEPs have achieved great appeal and success with professional employer organizations (PEOs). PEOs are companies that offer human resource outsourcing solutions to business owners including employee leasing arrangements, payroll, workers compensation, health and welfare benefits, and retirement benefits.

In a typical PEO arrangement, there are three parties involved: the PEO, the worksite employees and the client organization receiving the services of the worksite employees. Worksite employees receive compensation from a PEO for providing services to a client organization pursuant to a leasing service agreement between the client organization and the PEO.

A client organization enters into a leasing service agreement with the PEO whereby employees become worksite employees of the client organization receiving the services of such employees. Under common law standards, the employee-employer relationship in most cases exists between the client organization receiving the services (not the PEO) and the worksite employees.

Under the framework established by the IRS in Revenue Procedures 2002-21 and 2003-86, a PEO may establish a multiple employer plan that benefits worksite employees. Each client organization has the ability to join the MEP as an adopting employer with respect to its worksite employees.

Given the contractual agreements between PEOs and client organizations, in which roles, duties, and areas of potential liability are generally clearly defined, the MEP structure has proven quite effective.

contributions, each adopting employer is treated as maintaining a separate plan. In addition, for tax purposes, each adopting employer may deduct the contributions it makes on behalf of its employees. In the case of a professional employer organization (PEO) arrangement, this includes worksite employees from whom the adopting employer receives services. (For more information on PEOs, see *Professional Employer Organizations: An MEP Success Story* above.)

One of the greatest advantages of the MEP is that the annual Form 5500 filing, periodic IRS determination letter filing, and annual independent audit requirements apply to the MEP as a whole rather than on an adopting employer-by-adopting employer basis. To illustrate this point, regardless of the number of adopting employers (which could range into the thousands for a single MEP), only one annual Form 5500 filing, one periodic IRS qualification filing, and one annual independent audit is required of the MEP as a whole versus one for each adopting employer. **This translates to substantial economies of scale and cost efficiencies over stand-alone plans for small businesses, which will ultimately benefit plan participants.**

Best practices for achieving even greater cost efficiencies that are available under the current rules include:

- One plan administrator, trustee and named fiduciary for the entire MEP (which ensures uniformity in plan interpretation and administration, and results in plan efficiencies for all adopting employers)
- Centralized payroll (may significantly reduce plan costs)
- One investment line-up (alleviates some fiduciary concerns for adopting employers)
- Standardized plan features (minimal options allowed at the adopting employer level maximizes efficiency in administration and minimizes operational concerns)

For many MEPs, at least 90% of the plan provisions of the lead plan are cloned for all adopting employers. In practice, when no deviation is permitted from the lead plan's features, it is a detractor for adopting employers to join the plan as they may find the plan too rigid and confining.

Another important benefit to business owners is the ability to easily and seamlessly transition from an MEP to a stand-alone plan should their business change and it becomes more effective to sponsor their own single-employer plan.

There are over 3,500 multiple employer plans with thousands of adopting employers representing more than $300 billion in assets under management.[6] All industries and employer demographics are represented in these multiple employer plan statistics.

Recommendations for Simplifying and Improving MEP Regulation to Increase Their Appeal

The success of MEPs that is currently enjoyed among PEOs could be expanded into a much broader base of sponsoring organizations including associations, benefits providers, retirement plan providers, payroll providers, and other types of organizations offering services to small businesses. However, some general reforms are needed to facilitate usage of these plans by employers who do not sponsor a retirement savings plan for their workers. Recommended reforms include:

1. Implement safe harbors for the MEP sponsors and adopting employers who follow the rules. Examples include: create standards (parameters) that MEP sponsors can follow, without fear of liability, to purge non-compliant and/or unresponsive adopting employers quickly and inexpensively; and, delineate ways to immunize adopting employers who follow the rules from the errors of those who don't. Such safe harbors should be made part of the plan document that adopting employers are required to sign when they join the MEP.

2. Eliminate any requirements for adopting employers of the MEP to bear responsibility for another adopting employer that is delinquent in its obligations, e.g., top-heavy contributions; and, codify the means by which plan disqualification of the MEP can be avoided when an adopting employer violates the rules.

3. Further simplify the reporting and disclosure obligations of MEP sponsors and adopting employers such as those required under ERISA sections 102, 103 and 105, relating to annual reporting, summary plan descriptions and pension benefit statements.

For more information about Multiple Employer Plans, please call Transamerica Special Markets at **(866) 393-8967** (Monday through Friday, 9 a.m. to 8 p.m., Eastern Time) or visit the Transamerica Retirement Services website at **www.TA-Retirement.com**. (On the top of the homepage, click on "Products & Services," then on the left-hand side of the next page, click on "MEP Solutions.")

[6]Figures as of 2007, Judy Diamond Associates, Inc.