



AMERICAN ACADEMY of ACTUARIES

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September 1, 2016

Honorable Susan M. Collins
Chairman, Special Committee on Aging
G31 Dirksen Senate Office Building
Washington, DC 20510

Re: Multiple Employer Plans (Also known as Pooled Employer Plans)

Dear Chairman Collins:

The Pension Committee of the American Academy of Actuaries¹ supports your efforts to streamline and simplify the adoption of qualified plans for small employers. As you know, S. 266, the Retirement Security Act of 2015, only applies to small defined contribution plans; we encourage you to consider two additional but related options for multiple employer plans (MEPs):

1. A defined benefit MEP option.
2. An “Open Defined Contribution Retiree MEP” design (a defined contribution plan focused on the payout or decumulation phase).

As retirement plans evolve, employers are becoming increasingly unwilling to take all of the risks associated with providing lifetime income to current and former employees. As a result, these risks are rapidly being shifted to individuals. This shift happens through freezing, and terminating existing defined benefit plans, providing lump sum payments as an alternative to annuities, and placing a greater reliance on defined contribution plans. Individual plan participants are largely unprepared to effectively manage risks associated with defined contribution plans. At the same time, today’s fluid career paths make it less likely that an individual will derive most of his or her retirement income from a plan maintained by a single employer. Emerging design ideas focus on maintaining the pooling of retirement risk (such as living longer than expected) that is characteristic of defined benefit plans while shifting some or all of the investment risk to plan participants. Facilitating multiple employer arrangements of both the defined contribution and defined benefit variety will lead to approaches that can enhance retirement security.

¹ The American Academy of Actuaries is an 18,500+ member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Currently there are multiple employer defined benefit and defined contribution plans. Such plans can provide better access to tax-favored retirement plans for small employers and their employees. However, many small employers are already setting up their own single employer defined benefit plans but without some of the advantages in scale (e.g., expense reduction) available to larger multiple employer plans. Changes in the existing rules could improve this situation while potentially also attracting larger employers.

Defined Benefit MEPs

Although defined benefit MEPs have long been in existence, the number of these plans is small for a variety of reasons, including the difficulty individual employers face in managing their compliance and other risks, as well as funding rules that often produce an illogical allocation of contributions among employers. We would like to propose two minor changes that would encourage small employers to set up defined benefit plans (including cash balance plans) for their employees, thereby providing enhanced retirement security. These suggestions would require some changes to current laws and regulations but would come with significant benefits. These changes would be consistent with initiatives proposed by former Sen. Tom Harkin, as well as legislation in various states that allow private employers to adopt plans that are administered by a larger entity.

Currently, few large employers are establishing defined benefit plans, primarily due to the associated compliance and financial risks. However, there are promising approaches that limit the financial risk to sponsors by shifting the effects of investment experience to plan participants, while still providing a guarantee of lifetime income. Most of these approaches (generally various forms of “variable annuity plans”) are classified as defined benefit plans and must be administered and funded in accordance with the complicated web of defined benefit law. To encourage the development of these plans and allow a mechanism for individual employers to reduce the regulatory burden associated with defined benefit plans, we believe that defined benefit MEPs should be encouraged.

Two aspects of sponsorship need to be addressed:

1. Funding Rules. Under current rules, each employer in a MEP is responsible for the plan’s total unfunded liability, should one exist. This makes these plans far less attractive because one “bad apple” employer not paying its share of the cost unfairly shifts that burden to other employers. In addition, while this sharing of financial responsibility appears to protect the Pension Benefit Guaranty Corp. (PBGC) when considering these plans in isolation, it also makes these plans less popular than the less-efficient single employer plans. This conceivably *increases* the risk to the PBGC because it discourages the creation of new plans that would pay premiums to PBGC. Key features should include extending retirement coverage for employees (i.e., providing plans where there are none, and providing incentives for employers to maintain existing plans) while protecting the PBGC.
2. Administrative Burden. Compared to single employer plans, MEPs (be they defined benefit or defined contribution) can transfer much of the administrative and regulatory burden away from plan sponsor to the “platform provider².” This transfer may make the

² A platform provider would provide administrative, investments and fiduciary services. Financial service firms and State governments might be examples of such providers.

employer feel more comfortable in providing a plan. A key feature of this design should be separation of the employer from the “platform”.

There are also other advantages of MEPs over smaller single employer plans that support these two key goals and that go beyond just expense reduction. These include:

- Allowing for an independent plan-wide fiduciary to make it easier for the plan to comply with current disclosure/reporting requirements;
- Making it more cost-efficient for an employer to rely on a platform provider to supply quality professional advisers (investment advisers, actuaries, lawyers, etc.) and obtain better service for employees from professional administrators rather than multi-tasking HR managers (e.g., not forgetting to send notices/filings); and
- Providing for additional pooling of mortality and other risks.

We would like to work with you to develop the framework to allow defined benefit MEPs to exist and flourish. The following actions will be key to making these plans attractive:

- Eliminating the requirement for a common nexus between participating employers (similar to what has been proposed for state-run defined contribution MEPs);
- Modifying the funding rules to allocate to each employer only its reasonably determined share of plan costs, and to allow the plan to easily implement individual employer funding elections.
- Designing funding rules that allow for the effective sharing of risks between the plan and individual participants;
- Making each employer responsible only for its own discrimination issues;
- Allowing plans sponsors to forcibly remove bad apples from a MEP, potentially by a distress termination of their share of the MEP, without affecting other employers; and

Open Defined Contribution Retiree MEP

An Open Defined Contribution Retiree MEP is a new concept we would like to introduce. This design would offer retirees the opportunity to roll assets over to a provider specializing in retiree solutions rather than leave defined contribution assets in their employer’s plan (not an option encouraged by some plan sponsors today) or roll assets into an IRA with all the attendant decision-making.

Retirees needing to draw down on their savings have different needs than employees who need to focus on accumulating savings. Because these plans would focus exclusively on retirees—generally a population older than that of a traditional defined contribution plan and one with different interests – the plan features could be tailored to this population³.

³ For additional resources on distribution options, the Academy has written several issue briefs on the topic of Retiree Lifetime Income options. For more information on Retiree Lifetime Income options please see the Academy’s Lifetime Income Initiative website, located at <http://www.actuary.org/content/lifetime-income-initiative>.

Advantages for Retirees. The Open Defined Contribution Retiree MEP could:

- offer a range of investment choices comparable to those provided by the largest defined contribution plans today—and if they can attain scale, at very attractive fees;
- facilitate and spur the development of custom retiree drawdown strategies and post-retirement pooling techniques to help retirees deal with unexpected shocks during retirement (e.g., poor investment returns, inflation, or health issues); and
- encourage providers to develop additional retiree-focused offerings that go beyond financial services (e.g., assisting with decisions around commencement of Social Security, understanding Medicare options, or even assisting with the implications of part-time employment).

Overall, the Open Defined Contribution Retiree MEP would benefit retirees by creating a competitive marketplace that offers them the best of the financial adviser and insurance industry offerings in a comprehensible way.

Advantages to Plan Sponsors. Many employers sponsor qualified defined contribution plans to help employees save for retirement. However, once these individuals retire or move to another employer, the employer may not be in the best position to act (or appoint others to act) as a fiduciary of these retirement savings. It would be beneficial to allow other willing service providers to fill a fiduciary role and focus on post-retirement pay-out options and participant education.

Given the newness of this concept, Congress should consider granting the Internal Revenue Service and Department of Labor flexibility to set rules that can adapt to these new design concepts.

We would like to meet with you to discuss our concerns as well as other issues related to these concepts, such as the treatment of existing multiple employer plans. Please contact Matthew Mulling, the Academy's pension policy analyst (202-223-8196, mulling@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

Ellen L. Kleinstuber, MAAA, FSA, FCA, FSPA, EA
Chairperson, Pension Committee
American Academy of Actuaries