

# Open Multiple Employer Plans (MEPs)



## Background

Small businesses are a critical part of America's economy. Today approximately 58 million people (48% of the U.S workforce) are employed by small businesses.<sup>1</sup> However, many small businesses do not have the resources to offer their employees a workplace retirement plan due to the costs and complexity involved to administer a plan. Small businesses can only spread the fixed costs of a retirement plan across a small number of employees, which may result in higher costs per employee than for their large employer counterparts. Because smaller businesses cannot benefit from economies of scale, the costs of administering a retirement plan are often too high for smaller employers to take on.

This disparity has created an uneven benefits landscape in which employees of smaller companies are not as prepared for retirement as employees at larger companies. According to the Bureau of Labor statistics, 94% of companies with 500 or more employees offer a defined contribution retirement savings plan (such as a 401k), but only 44% of companies with less than 50 employees offer access to these types of plans.<sup>2</sup>

In addition to small business workers, the growing demographic of independent workers also struggle to save for retirement. Though independent workers enjoy flexibility in the modern workforce, these workers are classified as independent contractors, and often do not have access to workplace benefits as traditional employees, including a tax-advantaged retirement plan. The U.S. Government Accountability Office (GAO) issued a report that discovered gig (or "platform") workers "are about two-thirds less likely than standard workers to have a work-provided retirement plan."<sup>3</sup> This is a growing problem, as estimates indicate that over 57 million individuals, or about 36% of the U.S. workforce, are independent workers today. If current growth rates continue, the majority of the U.S. workforce would be freelancers by the year 2027.<sup>4</sup>

## Multiple Employer Plans Can Help Fill the Coverage Gap

A multiple employer plan (MEP) is a single employee benefit plan maintained by two or more employers. A MEP allows employers, particularly small businesses, to band together to achieve better pricing and reduce their administrative and fiduciary burden. MEPs have been available for years and are most often used by trade associations and professional employer organizations.

MEPs help address the high cost and administrative burden of offering a retirement plan. If a small employer joins a MEP along with other small employers, the fixed costs of the plan can be spread among all the participating employers, thereby reducing the average per-participant cost. By joining a MEP, small employers can also transfer the administrative and compliance responsibilities associated with administering a retirement plan to experienced and qualified retirement professionals.

<sup>1</sup> "SMALL BUSINESS PROFILE," U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY, 2017.

<sup>2</sup> "Establishments Offering Retirement and Healthcare Benefits," March 2017, Bureau of Labor Statistics; <https://www.bls.gov/ncs/ebs/benefits/2017/ownership/private/table01a.htm>.

<sup>3</sup> "Contingent Workforce: Size, Characteristics, Earnings, and Benefits," April 20, 2015, U.S. Government Accountability Office, <https://www.gao.gov/assets/670/669766.pdf>.

<sup>4</sup> "Freelancing in America," Upwork and Freelancers Union, October 2017, <https://www.upwork.com/i/freelancing-in-america/2017/>. This study, conducted by independent research firm Edelman Intelligence and commissioned in partnership with Upwork and Freelancers Union, surveyed 6,000 U.S. workers to analyze the size of the growing freelance economy and the major role freelancers play in the future of work.



## Current Policies Inhibit Wider Adoption of MEPs.

Current law inhibits wider adoption of open MEPs in two key ways: First, guidance from the Department of Labor (DOL) prevents unrelated employers from joining together solely for the purpose of participating in a MEP. This is sometimes referred to as the “common bond” or “commonality” requirement, meaning current rules require employers to be part of a bona fide group or association with a common, substantial business purposes other than the plan. Second, if one employer in the MEP fails to comply with applicable tax rules, all employers in the MEP face potential liability, including the entire plan possibly losing its tax-advantaged status. This is often referred to as the “one-bad-apple” rule. The possibility that a small business owner could incur substantial tax liability due to the actions of another participating employer is a major impediment to MEPs, even if the risk of actual disqualification of the MEP appears to be low.

## Policymakers Can Make Common-Sense Changes to Increase the Use of MEPs

There is bipartisan agreement that changes to the current rules governing MEPs could enhance access to and participation in workplace savings plans for small businesses. Encouragingly, there is renewed interest from some policymakers in making legislative changes to create open MEPs. A recent Executive Order signed in August 2018 by President Trump has initiated a regulatory refresh in this space as well. This renewed interest is driven by the desire to enhance the retirement savings benefits available to employees of small businesses and to independent workers. The pooling of assets and simplification of administrative complexity for the plan provider that an open MEP structure can provide would help to bring down costs and would remove barriers for small employers to offer a plan, expanding retirement coverage.

## Without policy changes, it will continue to be difficult for small businesses to offer retirement plans

Fidelity supports many aspects of the federal legislative efforts currently under consideration, including several bipartisan proposals that would reduce the legal and operational risks for both employers and MEP providers. These proposals would allow more employees of small businesses to save and invest for retirement in a tax-advantaged plan, and small employers will therefore be better equipped to compete with larger employers for talent. We encourage policymakers to enact the following changes to MEPs.

**Eliminate the Common Bond Requirement:** This requirement has inhibited the growth of MEPs among small employers. Eliminating the common bond requirement would allow unrelated employers to participate in the same open MEP whether or not they belonged to a group with a separate business purpose. We believe there is an opportunity to revisit the common bond requirement either through regulatory or legislative action. On August 31, President Trump signed an executive order (EO) directing the DoL and Treasury to review ways that will help facilitate small employers and independent workers joining together to form a multiple employer plan (now referred to by the Administration as Association Retirement Plans) and the DoL recently proposed a rule in response to this directive. While we applaud the DoL’s effort, the proposal does not eliminate the common bond requirement. We believe the DoL could go further and eliminate the common bond requirement, expanding the availability of MEPs for small unrelated employers. Fortunately, many federal legislative proposals, including several bipartisan ones that solve for the common bond requirement, are currently under consideration.



**Remove the One-Bad-Apple Rule:** The Internal Revenue Service or Congress should clarify tax law so that any adverse consequences of not complying with the applicable tax-qualification requirements of MEPs will be limited to the noncompliant employer, rather than impacting the entire plan and all the participating employers. A process should be set up where the “bad apple” is removed from the MEP by the trustee under an orderly process minimizing the impact on the other adopters. Third party trustees or administrators of the MEP should not be held responsible for the disqualifying acts of one adopter.

## Additional changes would make MEPs significantly more attractive.

Another area that has inhibited many small businesses from adopting traditional 401(k) plans is nondiscrimination testing (NDT). Because of their small number of employees, many small businesses may fail the test, requiring costly and disruptive corrections. Therefore, we believe that open MEPs should have additional NDT safe harbor relief. The safe harbor should be based on universal eligibility for the plan and full and immediate vesting, rather than requiring minimum contributions to be made by the employer. In other words, there should be no need for small employers to make a certain level of employer contribution to avoid nondiscrimination testing, so long as all employees are eligible and fully vested in any contributions that are made to the plan. This will eliminate one of the biggest obstacles confronting many small businesses that want to start a plan.

In addition, MEP reform should include an overall drive to electronic communications, for both the collection and dissemination of information. This should include a uniform standard for electronic delivery of a single annual notice to all participants of each participating employer within the open MEP.

**Additional features that we believe open MEPs should have include:**

- Auto enrollment at a minimum starting participant deferral of 3%.
- Automatic annual deferral rate escalation at 1% per year, up to a cap of 15%.
- A simplified investment menu consisting of a default option into target date funds, and a limited number of core investment options.
- The plan provider of the open MEP will be the named fiduciary and have responsibility for selecting and monitoring the plan investment options.

## Future State of MEPs

Another important impediment to a broader increase of MEP formation has been the imposition of fiduciary responsibility, under ERISA, on the participating employer. Small employers are often ill-equipped to undertake the responsibilities of a fiduciary under ERISA. For “open MEPs”, the MEP sponsor would act as the plan administrator for the plan. As a result, this entity would become a fiduciary to the plan on behalf of the participating employers, alleviating this burden and greatly increasing the attractiveness of participating in a MEP. Legislation or additional regulatory guidance that would facilitate fiduciary responsibility being assumed by a person other than the small participating employer would be extremely helpful.



## Fidelity is a strong supporter of Open MEPs

If Congress acts to truly open multiple employer plans, 55+ million small business and gig workers could have access to a start-up MEP for at least 50% less cost than a typical stand-alone defined contribution plan today. This would encourage the creation of more open MEPs and lead to greater retirement coverage among small businesses and independent workers.

Fidelity continues to advocate for changes to MEPs that will help fill the retirement savings gap. We are encouraged that there is an appetite by many policymakers to advance open MEPs and a bipartisan recognition that open MEPs can help close the coverage gap that exists between the retirement savings benefits available to employees of large businesses versus small businesses.

We commend the focus on this issue among policymakers and urge, legislators and regulators to complete action to enable marketplace adoption by employers. Expanding coverage among small businesses is important to all plan sponsors because it strengthens the overall voluntary contribution retirement system and helps ensure consistency of coverage across employers of all sizes.

We will continue to advocate for policy changes that will improve American's retirement preparedness. Learn more about Fidelity's policy and advocacy efforts at <https://www.fidelity.com/about-fidelity/public-policy>.

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