

**Statement of
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**Presented to
The U.S. Senate Committee
On Health, Education, Labor and Pensions
Subcommittee on Primary Health and Retirement Security**

**Hearing on
Exploring the ‘Gig Economy’ and the Future of Retirement Savings
February 6, 2016**

TAG Resources appreciates the opportunity to provide this written testimony in connection with the hearing by the U.S. Senate Committee on Health, Education, Labor and Pensions Subcommittee on Primary Health and Retirement Security exploring “Gig Economy” retirement plan issues. As noted by the Brookings Institution’s Retirement Security Project, contingent workers “generally lack access to an employer-sponsored retirement account that makes saving easier through mechanisms such as payroll deduction, employer contributions, automatic enrollment and automatic escalation of contributions. Without this access – or other alternatives – this population may face retirement with little more than Social Security.¹”

One mechanism that holds substantial promise to help address this growing problem is to make “employer-type” retirement savings plans available to the contingent workforce through the “open multiple employer retirement plan,” or the “Open MEP.®”²

TAG Resources is uniquely positioned to expertly testify on the structure, operations and uses of the Open MEP, and that platform’s flexible ability to be used in a number different ways to assist the contingent workforce in accumulating retirement savings. TAG has for many years been in the marketplace as the country’s leading aggregator of plan services for both closed MEPs and for those employers who would otherwise benefit from changes which would permit Open MEPS.

The Open MEP has a straightforward structure. The organizer of the MEP stands in the shoes of the traditional employer, though without actually being the employer. It accomplishes this through use of traditional fiduciary and contract authority which is assigned to the organizer by each participating employer. The Open MEP leverages the joint resources of unrelated, small employers to provide retirement plan expertise (including professional fiduciary protections); access to institutional support; access to a wide range of unrelated, non-proprietary investment

¹ Retirement Plans for Contingent Workers: Issues and Options; William G. Gale, Sarah E. Holmes, and David C. John; September 23, 2016. The Retirement Security Project, The Brookings Institution

² Note that “Open MEP” is a registered trademark of TAG.

fund families; and institutional pricing of investments; none of which would be otherwise available to them-at virtually any cost. It also does this at a cost which is highly competitive to much larger employer plans. The success of this approach is demonstrated by the fact that 40% of the employers that indicated interest in participating in a TAG Open MEP – which unfortunately has not been able to be set up due to the legal constraints -- were actually startups.

This Open MEP arrangement can easily be structured to support contingent workers in at least two different ways, bringing the value of their combined resources to those workers in the same way that it works for start-up employers. This is because the independent worker is a small business that can make “employer” and “employee” contributions on their own behalf to a retirement plan, whether or not they are actually legally incorporated. In this respect, the Open MEP can treat the independent worker exactly the same as countless other small businesses which could otherwise participate in an Open MEP.

The first way is for the company contracting with independent worker to sponsor a plan for their contingent workers. The company could not allow participation by the independent or contingent workers in the company’s own workplace retirement savings plan, because the company is restricted by law to cover only its own employees. An Open MEP solves for this. It treats each contingent worker as the co-sponsor of the MEP, which can then cover that worker. Operationally, the company could build into the contract it has with the worker a type of “automatic contribution” arrangement where, as a matter of contract, the employer would pay a portion of the contractor’s compensation directly into the plan. (It’s important to note that the Open MEP named fiduciary owes its fiduciary obligations to the independent worker, not to the company that has contracted with the independent worker). The company could also, by contract, provide an additional percentage, such as 3% of the fee paid to the independent worker (i.e., \$1,200), and contribute that directly to the worker’s MEP. For tax purposes, the \$1,200 contribution would be treated just like cash compensation from Company X to the worker: deductible as cash compensation for Company X and taxable to the worker. But the worker could then deduct the contribution to the MEP, just as if the worker had made the contribution himself or herself.

The second way is for organizations unrelated to the contracting company to establish the plan, and for those contracting companies to actually contract with the independent worker to make contributions to the independently organized MEP identified by the independent worker. The tax and legal structure would be the same as the first example, but the MEP would have participants from a wide range of employers-and the independent worker would have the opportunity to stay in the same plan it wants, regardless of who he or she is contracting with.

There are a number of other types of designs for under which the Open MEP structure could be used for the gig economy; these are only the most obvious examples. Permitting Open MEPs would enable the innovativeness of the marketplace to design MEPs which could accommodate

most any sort of circumstance, while providing the independent worker both ERISA protections as well as institutional pricing which would not otherwise be available to her or him.

There are two essential reforms which are needed to facilitate the use of MEPs as a practical option for independent workers to save for retirement. First, and foremost, employers without any “common interest” should be able to join together in a MEP. Elimination of this common employment interest requirement will increase the number of small employers that provide a retirement plan for their employees by joining in a MEP, including independent workers.

Secondly, employers (including independent workers) in a MEP should be protected from liability for the non-compliant acts and omissions of other employers or independent workers which could result in the MEP being disqualified under the Internal Revenue Code (the “One Bad Apple” rule), and tax penalties being imposed on those workers. Typical reasons for noncompliance (jeopardizing the qualified status of the plan) include providing insufficient information for discrimination testing and other compliance purposes. Under existing bi-partisan proposals, the plan fiduciary could expel the non-compliant employer from the MEP and preserve the MEP’s qualified status for the remaining employers in the plan.

The above reforms have long been advocated by both Republican and Democrat Members in both Houses of Congress.

We especially thank the Chairman of this Subcommittee for his leadership on MEP reform.

Thank you for your time.
