

January 19, 2021

The Honorable Nancy Pelosi
House of Representatives
H-232, The Capitol
Washington D.C. 20515

The Honorable Chuck Schumer
United States Senate
S-221, The Capitol
Washington D.C. 20510

The Honorable Kevin McCarthy
House of Representatives
H-204, The Capitol
Washington D.C. 20515

The Honorable Mitch McConnell
United States Senate
S-230, The Capitol
Washington D.C. 20510

Dear Speaker Pelosi and Leaders McCarthy, Schumer, and McConnell,

Congratulations on your recent election and welcome to the 117th Congress. We, The ERISA Industry Committee (ERIC), are looking forward to working with you and your staff in the coming weeks and months ahead on issues including health care, retirement, compensation, and paid leave policies that are at the center of employee benefits.

ERIC is a national advocacy organization that exclusively represents large employers that provide health, retirement, paid leave, and other benefits to their nationwide workforces, their employees' families, and retirees. With member companies that are leaders in every sector of the economy, ERIC advocates on the federal, state, and local levels for policies that promote flexibility and uniformity in the administration of their employee benefit plans. ERIC member companies have stores, warehouses, offices, operations, and employees in every state and congressional district.

You are likely to engage with an ERIC member company when you drive a car or fill it with gas, use a cell phone or a computer, watch TV, dine out or at home, enjoy a beverage, fly on an airplane, visit a bank or hotel, benefit from our national defense, receive or send a package, go shopping, or use cosmetics.

ERIC and our member companies are proud to have worked with the 116th Congress to accomplish several critical objectives, including:

- Ending the abusive practice of surprise medical billing
- Working to reduce the high costs of prescription drugs
- Allowing individuals in high-deductible health plans (HDHPs) to receive 1st dollar coverage of telehealth benefits
- Promoting transparency, accountability, and fairness in the medical system
- Allowing individuals to use retirement savings for COVID-related emergencies
- Providing retirement funding relief for employers that sponsor pension plans

Now we are eager to engage with you and the 117th Congress to continue advancing legislative solutions that will promote employee benefits for American workers and families.

Health Care

ERIC's work on health policy is focused on promoting affordable, high-value coverage for employees by promoting transparency and competition, closing loopholes and eliminating abuses, and improving flexibility for employers to innovate and design the best health coverage for their beneficiaries. As you may know, 158 million Americans receive health coverage from their employers, and ERIC member companies on average pay 80 percent of the costs for that health coverage. Congress can support the workforce with specific legislation to:

- **Expand Access to Telemedicine.** Despite the pandemic, many Americans lack sufficient access to telehealth benefits. To provide all employees and families with needed access to telehealth, ERIC supports efforts to:
 - Make permanent the allowance of 1st dollar coverage of telehealth in HDHPs
 - Allow employers to offer standalone "excepted benefit" telehealth benefits
 - Increase the interstate practice of medicine for telehealth providers
 - Establish a national, uniform set of rules for telehealth
- **Pass Targeted Relief for Employee Benefits During the Pandemic.** Numerous industries are facing financial hardship and uncertainty during the pandemic. Congress can provide relief by:
 - Banning medical price-gouging during the COVID-19 pandemic
 - Allowing flexibility for employers experiencing unexpected workforce transitions related to employer shared responsibility penalties
 - Ensuring employers are not jeopardized by frivolous lawsuits related to employee benefits during the pandemic
 - Requiring that providers that accept relief funds cannot surprise bill patients during 2021
- **Enact Policies to Reduce Unsustainable Drug Costs.** ERIC supports policies to increase competition and address market failures, including:
 - Ending "evergreening" and other gaming of the drug patent system
 - Stopping abuse of FDA "citizen petitions"
 - Preventing the "blocking" of generic competition
 - Eliminating so-called "rebate traps" and couponing strategies, and enacting other policies to promote affordable biosimilars
 - Ensuring policies such as inflation caps or direct government negotiations also protect private sector patients and purchasers
 - Protecting medical management to ensure value for plan enrollees
 - Addressing issues related to so-called "international free-riding" wherein Americans pay vastly higher drug costs than other wealthy, industrialized nations
 - Eradicating sovereign immunity schemes

- **Promote Transparency and Accountability in the Health System.** ERIC supports a broad array of strategies to improve the health care system for employees and their families, including many provisions already endorsed by the Committees of jurisdiction, including:
 - Eliminating abusive hospital contracting practices such as "all-or-nothing", "most-favored-nation", "anti-tiering" and "anti-steering", and non-consensual imputed contractual term clauses
 - Modernizing pharmacy benefit management rules to require full transparency and reform so-called "spread pricing", and requiring rebates and discounts to be passed through to plan fiduciaries
 - Requiring that patients receive timely medical bills
 - Conducting oversight of the involvement of private equity in escalating health care costs, including in "joint venture" agreements with hospitals
 - Advancing health information technology to empower patients and providers
 - Eliminating abusive steerage of beneficiaries by kidney dialysis firms and their surrogates
- **Improve Benefits for HDHP Beneficiaries.** Tens of millions of Americans are enrolled in HDHPs, but the rules for these plans need modernization, including to:
 - Allow 1st dollar coverage of onsite employee health centers
 - Correct the definition of "dependents" to include adult children, domestic partners, and other non-traditional dependents
 - Fix the spousal flexible spending account (FSA) glitch
 - Permit the use of Health Savings Account (HSA) funds for wellness, exercise, and physical activity
 - Allow HSA benefits to be coordinated with direct primary care, TRICARE benefits, standalone telehealth, and other appropriate supplemental benefits
- **Improve Patient Safety Throughout the System.** Congress can take several modest but meaningful steps to save lives, improve health, and preserve taxpayer dollars, including to:
 - Require streamlined, comprehensive infection reporting to the Centers for Disease Control and Prevention (CDC) and ensure that this information is made public to improve plan design and safety
 - Adopt policies in government programs like Medicare to mirror private sector strategies to eliminate medical mistakes, including so-called "Never Events"
 - Empower the federal government to coordinate patient safety activities, including aggregating information to establish best practices, and promoting autonomous solutions

Retirement and Compensation

Over 70 percent of American workers are covered by retirement plans that are voluntarily provided by their employer and on which they depend for their financial wellness and retirement security.¹ ERIC's retirement policy focus is on maintaining the voluntary, employer-provided system and expanding retirement savings opportunities with minimal administrative burdens. Our priorities for the new Congress include COVID-related provisions that are still needed; bipartisan proposals that would update needed rules and expand retirement security; and newer measures that are important to plan sponsors as they work to provide retirement security for their workforce.

- **COVID-Related Provisions.** To help workers and employers during the COVID-19 crisis, we recommend that Congress act quickly to pass and send to the President the following provisions:
 - **Relief for single-employer pension plans** – provide extensions of the amortization period and the pension funding stabilization percentages as included in the HEROES Act (H.R. 6800)
 - Reform of the **multiemployer pension plan** system
 - Expansion of **permissible transfers under Code section 420** to strengthen retiree health care by allowing employers to use additional funds for retiree health and retiree life insurance benefits
 - Temporary relief from testing requirements for employers that **reinstate 401(k) matching contributions** for the 2020 plan year
- **Proposals Previously Introduced in Legislation.** After the passage of the SECURE Act in the “Further Consolidated Appropriations Act of 2020” (H.R. 1865), the 116th Congress introduced bipartisan legislation to build upon the SECURE Act by expanding retirement savings opportunities and minimizing administrative burdens.² ERIC supports provisions in previously introduced legislation that would:
 - **Increase the age for required minimum distributions** to age 75
 - Treat **student loan payments** as elective deferrals for the purpose of matching contributions
 - Provide safe harbor for the **recovery of retirement plan overpayments**
 - **Simplify reporting and disclosure requirements**
 - **Establish an Office of Retirement Savings Lost & Found** within the Pension Benefits Guaranty Corporation (PBGC) that would serve as a repository for information about all lost retirement accounts accessible through a searchable online database
- **New Retirement Proposals.** As circumstances change and new challenges emerge, plan sponsors new ways to improve the retirement benefits for their employees and retirees. ERIC urges the 117th Congress to consider and advance the following policies and pass them this year as they are essential to strengthen retirement security:
 - Allow for **emergency savings accounts** as part of retirement savings plans

¹“[National Compensation Survey: Employee Benefits in the United States](#)”, March 2020

² The Retirement Security and Savings Act of 2019 and the Securing a Strong Retirement Act of 2020 were introduced subsequent to the SECURE Act and include the proposals discussed in this section

- **Modify the definition of a Highly Compensated Employee** to encourage the inclusion of employees who meet the definition but are not on an executive or management level
- Allow **cafeteria plans** to offer participants additional pre-tax benefit options such as student loan repayment, disability insurance, long-term care insurance, longevity insurance, and retirement planning services

Federal Paid Leave

It is crucial to recognize that large employers already voluntarily provide generous paid leave benefits to their workers in every state and are greatly challenged by the conflicting and counterproductive administrative requirements placed by individual states and localities, which add to the cost of paid leave plans but not to the benefits received by workers. In the current debate, it is critical that Congress consider the voice of large employers and the paid leave benefits that they currently provide to millions of workers to ensure that any new policy does not negatively impact current paid leave benefits. The new Congress has an opportunity to examine the coverage that is already being provided and determine how to best support that coverage. In doing so, we encourage Congress to focus on the following issues:

- **Any federal paid leave proposal should support, and not negatively impact, the generous paid leave benefits already provided by large employers.** Federal rules should not create unintended consequences for existing employer benefit programs, such as by imposing unnecessary administration or compliance burdens.
- **Employers that voluntarily offer national paid leave benefits should be able to opt out of the patchwork of state and local paid leave programs.** If employers already have a nationwide paid leave plan then they should not have to comply with multiple, often conflicting, state and local standards that create unnecessary costs and administrative burdens and distract from the provision of valuable paid leave benefits. Furthermore, such employers should also be exempt from any federal paid leave program that may be established and instead continue to offer paid leave on a voluntary basis.

Conclusion

Employers are working diligently to provide robust employee benefits to their workforce, innovating every day to ensure that their benefits plans enable workers and their families to be safe and healthy, have access to high quality, affordable health care, and have a financially secure retirement. We look forward to working with you on legislation to help American workers, their families, and retirees. Please let us know what additional information ERIC can provide or how we can help during the 117th Congress.

Sincerely,



CC: Members of Congress