

January 19, 2021

Dear President-Elect Biden and Vice President-Elect Harris,

Congratulations on your election as the President and Vice President of the United States. The ERISA Industry Committee (ERIC) is eager to work with your Administration to advance measures that support employer-provided health, retirement, paid leave, and compensation benefits that are so critical to the workforce.

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 families, and retirees. With member companies that are leaders in every sector of the economy and with operations in every state, ERIC advocates on the federal, state, and local levels for policies that promote flexibility and uniformity in the administration of nationwide employee benefit plans.

Americans engage with an ERIC member company when they 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 member companies work diligently to provide robust benefits to their employees and to tailor the benefits to meet the needs of their unique workforce. By offering comprehensive health coverage, retirement savings plans, and paid leave and wellness programs, our members ensure their workforce is healthy and prepared for a secure retirement.

We believe your Administration can help American workers, retirees, and their families by taking certain executive action and we urge you to do so as quickly as possible.

Health Care

ERIC's work on health policy is focused on enabling employers to provide affordable, high-value coverage for their employees by promoting transparency and competition, closing loopholes and eliminating abuses, and improving flexibility for employers to innovate and design the best health benefits for their beneficiaries. Specific actions your Administration can take to advance these goals include:

- **Improve COVID-19 Testing and Vaccinations, and Provide Other Immediate COVID-19 Relief for Employees.** Several government actions would help to accelerate our member companies' ability to vaccinate their workforce and reopen the economy, including to:
 - Establish a national, uniform plan for vaccination that prioritizes reopening the economy
 - Maintain and improve protections to avoid out-of-network price-gouging when patients obtain COVID testing and vaccinations
 - Empower employers to create incentives for employees to get vaccinated
 - Expand policies to protect employers that rely on governmental guidance to protect employees and the public

- Suspend enforcement of Internal Revenue Service (IRS) employer shared responsibility penalties for companies and industries experiencing rapid transitions and hardship due to the pandemic
 - Require that health care providers accepting COVID relief funds may not send "surprise" medical bills to patients during 2021, as the recently enacted surprise billing ban takes effect in 2022
 - Direct the federal agencies to adopt a permanent notification safe harbor that recognizes any document delivered to a participant's electronic location of choice is considered delivered
- **Maintain and Expand Efforts to Implement Transparency and Accountability in Health Care.** ERIC supported the efforts of the previous Administration in these areas and urges you to go even further, including to:
 - Hold firm to implementation dates for price transparency
 - Consider increasing penalties for hospital systems that hide pricing information from patients
 - Clarify that an employer may rely on a third-party administrator or carrier to comply with insurer transparency requirements
 - Develop a standard for data to streamline aggregation and ease comparison shopping
 - Use antitrust enforcement to eliminate market abuses by large hospital systems
 - Consider applying fiduciary status to vendors involved in negotiating and purchasing health care products and services on behalf of plans and patients
 - Move forward with efforts to ensure interoperability and patient access for electronic medical records
- **Advance and Expand Telehealth During the Pandemic.** ERIC member companies offer quality telehealth benefits, but these benefits could be improved, offered to more employees, and made more affordable by federal rules that:
 - Expand the ability of employers to offer standalone telehealth benefits, not just to employees ineligible for medical benefits, but also for those who are unenrolled
 - Promote licensing reciprocity to facilitate the interstate practice of medicine for telehealth providers
 - Establish a uniform set of rules for multi-state telehealth benefit plans to eliminate state restrictions that block patients from telehealth benefits
- **Reduce the Costs of Prescription Drugs.** The time is now to build on efforts to control the high costs of prescription drugs. We request that you consider measures to:
 - Deny patents used to form "patent thickets" or "evergreen" product exclusivity
 - Rein in the manipulation of FDA "citizen petitions," which are being used to delay competition
 - Use antitrust enforcement to end abuses such as "pay-for-delay" agreements, misuse of Risk Evaluation and Mitigation Strategy (REMS) safety protocols, generic blocking, rebate traps, and other anti-competitive practices in the prescription drug market
 - Explore additional options to promote the use of safe and affordable biosimilar medications

- **Improve High-Deductible Health Plans (HDHPs).** Tens of millions of Americans are enrolled in HDHPs, including many who have no other affordable options. Modernizing HDHP rules could vastly improve the coverage these individuals receive. Specifically, we urge your Administration to:
 - Allow the coordination of HSA-eligible HDHPs with supplemental benefits like telehealth-only plans, direct primary care, TRICARE benefits, Medicare, and other appropriate benefits
 - Give employers the flexibility to offer 1st dollar coverage of high-value services, such as onsite employee health centers
 - Provide technical guidance to eliminate the "spousal FSA glitch," broaden the definition of "dependents" to include adult children and domestic partners, and streamline rollovers from FSAs and MSAs into HSAs

- **Eliminate Abusive Steerage of Beneficiaries.** Schemes by kidney dialysis firms and their surrogates and certain prescription drug manufacturers significantly increase health care costs for all patients. This can be eliminated by:
 - Finalizing the Obama Administration's rule to ban the third-party payment of premiums in the ACA exchanges. We urge you to expand this to cover the private sector as well (including COBRA beneficiaries), and to consider efforts launched in California to control costs of treatments for patients subsidized by self-interest "charities"
 - Requiring that drug manufacturer coupons be means-tested, or otherwise targeted to the impoverished, rather than being used to deny market-share to generic and biosimilar competition

- **Improve Patient Safety Throughout the System.** The Administration can take several meaningful steps to save lives and improve health, including to:
 - Require streamlined, comprehensive infection reporting to the Centers for Disease Control and Prevention (CDC) and ensure that this information is available to the public to improve plan design and safety
 - Adopt policies in government programs like Medicare to mirror private sector strategies to eliminate medical errors including so-called "Never Events"
 - Create an interagency coordinating committee to align federal government patient safety activities, including aggregating information, best practices, and promoting autonomous solutions

Retirement and Compensation

ERIC's retirement policy focuses on maintaining the voluntary, employer-provided system and expanding retirement savings opportunities for employees and retirees with minimal administrative burdens. We urge the Administration to act on the following provisions to help plan sponsors provide financial and retirement security to their workforce.

- **Maintain the Expansion of Electronic Delivery for Retirement Plan Notices.** Electronic delivery of retirement plan disclosures helps participants better understand their benefits and become more engaged in maximizing the value of their hard-earned employee benefits. We urge the Administration to maintain the safe harbor that was recently finalized in Labor Department

regulations, which allows plan sponsors to provide electronic delivery of retirement plan notices as the default delivery method.

- **Exempt Employers Who Already Offer Paid Leave Benefits from Federal and State mandates.** Large employers currently offer generous paid leave benefits, so mandates on them are unnecessary and, as demonstrated on the state level, result in complex and superfluous administrative and compliance burdens. Consequently, emergency paid leave provisions should continue to exclude employers with more than 500 employees. If, however, the threshold is extended to larger employers, the mandate should exempt employers that already provide paid leave.
- **Continue with Guidance to Determine Plan Administrator Role to Locate Missing Participants.** The Department of Labor has recently issued guidance for finding missing or unresponsive participants in employer retirement plans. This guidance is an important first step in providing clarity and transparency for plan sponsors, but additional guidance is needed to ensure that plan sponsors may use processes to locate participants based on their particular factual situation. We urge the Labor Department to confirm that identical processes are not required by all employers. Furthermore, we urge the Administration to support legislation that creates a Pension Registry to provide additional support in finding missing participants.
- **Update Lifetime Income Disclosure Requirements to Reflect Current Practices.** We urge the Administration to implement a rule that will provide meaningful information to plan participants and flexibility for plan sponsors to continue to provide innovative and individualized retirement education tools to their plan participants. A strict, one-size-fits-all disclosure requirement will confuse and mislead plan participants without advancing retirement security or lifetime income planning. Therefore, we urge the Labor Department to allow plan sponsors to provide plan participants with use of online retirement calculators in place of a static, non-individualized calculation.
- **Provide Permanent Relief from the Physical Presence Requirement for Spousal Consent.** The Treasury and IRS have provided temporary relief from the in-person consent requirements that has proven successful, is popular with participants, and is quickly gaining broad acceptance in states. ERIC urges the Administration to make this guidance permanent.
- **Allow Relief from Single-Employer Pension Benefit Guaranty Corporation (PBGC) Premiums.** The PBGC's trust fund for the single-employer system does not face – by the PBGC's estimates – any immediate or long-term threat of default. Therefore, the PBGC could reduce premiums for single-employer plan sponsors without jeopardizing the viability of the program. We urge the Administration to reduce premiums to provide needed flexibility for employers through the pandemic and beyond.

Conclusion

Executive action is needed to support the workforce and strengthen their employee benefit plans as detailed above. We look forward to working with you and your agencies as you develop rules in these areas, and urge you to avoid policies that impose burdens on benefit plans. Thank you for considering

these policies, which we believe your Administration can implement immediately without the need for Congressional action. ERIC stands ready to provide additional information and to work cooperatively with the Administration to support the nation's workforce, retirees, and their families.

Sincerely,

A handwritten signature in cursive script, reading "Annette Harris Siddle".