ERIC | THE ERISA INDUSTRY COMMITTEE
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STATEMENT FOR THE RECORD BY

THE ERISA INDUSTRY COMMITTEE

TO THE U.S. SENATE
COMMITTEE ON HEALTH, EDUCATION, LABOR & PENSIONS

HEARING ON

"RISE AND SHINE: IMPROVING RETIREMENT AND ENHANCING SAVINGS"

March 29, 2022

Chair Murray, Ranking Member Burr, and Members of the Committee on Health, Education, Labor and Pensions, thank you for the opportunity to submit a statement for the record on behalf of The ERISA Industry Committee (ERIC) on improving retirement security and enhancing savings.

ERIC is a national nonprofit organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans and to lawfully operate under ERISA's protection from a patchwork of different and conflicting state and local laws, in addition to federal law.

Americans engage with an ERIC member company many times a day, such as 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 or snack, use cosmetics, fly on an airplane, visit a bank or hotel, benefit from our national defense, receive or send a package, or go shopping.

ERIC member companies offer significant health and retirement benefits to attract and retain employees, improve health and financial wellbeing, prepare employees for retirement, and provide peace of mind. To support these efforts, ERIC advocates on the federal, state, and local levels for policies that help large employers provide benefits efficiently and effectively. Some of these policies are described below.

IMPROVING RETIREMENT SECURITY

Large plan sponsors invest in their employees and their financial wellness, including retirement security. ERIC's member companies have different workforces and benefits designs, but employers, workers, and retirees can all gain from a retirement system bolstered by policy enhancements. Sometimes, federal rules get in the way of the flexibility that forward-thinking employers need to offer helpful options to their workers.

At other times, arcane rules can inadvertently harm both workers and job creators by unnecessarily increasing costs and administrative burdens, creating inefficiencies, and reducing opportunities. This Committee can play a crucial role in promoting policies that reduce barriers and increase opportunities to enable workers to make the most of their retirement savings. We look forward to continuing to serve as a resource for you and other policymakers to help ensure that well-intended proposals accomplish these important goals.

ERIC appreciates the leadership of the Members of this Committee and Congress broadly in tackling these challenges in a bipartisan way. Just this week, the House of Representatives is expected to advance the *Securing a Strong Retirement Act of 2022 (*H.R. 2954), bipartisan legislation that has the potential to increase savings possibilities and reduce red tape. ERIC is pleased that the bill:

- **Supports increased retirement savings** by allowing employers to make "matching contributions" for employee student loan payments
- **Eases administrative burdens on plan sponsors** by expanding the self-corrections process, reducing unneeded notices, and requiring regulators to review current disclosures and make recommendations to simplify
- **Creates a searchable online database** to help plan participants locate lost retirement accounts
- **Updates the cap for transferring former employees' retirement funds** to an IRA from $5,000 to $7,000
- **Helps employers encourage retirement savings** by allowing plan sponsors to offer de minimis financial incentives to motivate employee participation
- **Increases the age** at which minimum required distributions begin to age 75
- **Provides additional savings opportunities for those close to retirement** by increasing the catch-up limit in plans to $10,000 per year beginning at age 62.
- **Clarifies the rules for recoupment** of inadvertent retirement plan overpayments to innocent participants

Some of these provisions, and others that ERIC supports, are also included in the *Retirement Security and Savings Act* (S. 1770), introduced by Senators Cardin and Portman. As Congress continues to refine legislative proposals to enhance the private-sector retirement system, ERIC offers the following recommendations:

- **Maintain electronic disclosure as an option for default distribution**. A 2020 Department of Labor (DOL) regulation permitted plan sponsors to provide electronic delivery as the default option for providing retirement plan notices, provided certain conditions were met. This regulation eased administrative burdens and allowed plans to offer notices and information more quickly and usefully (for example, by embedding internet links to provide beneficiaries with useful and targeted information). The regulation included substantial safeguards, including a requirement that participants have internet access and the ability for participants to opt-out any time. These protections were specifically recognized by the DOL in a report required by the *Consolidated Appropriations Act of 2021*. According to the DOL report, the 2020 regulation "is unlikely to have any negative impact" on rural residents and seniors, but the regulation is critical to reducing administrative burdens that make providing retirement benefits more costly.

- **Do not impose burdensome new administrative requirements.** Retirement policy changes should not make retirement plans more costly and less flexible. Policymakers should carefully scrutinize proposals that would increase administrative requirements for defined contribution plans, make it harder for defined benefit pension plan sponsors to manage their risk, or require plans to provide costly, one-size-fits-all written disclosures. New burdens on employers should always be subject to cost and benefit analysis.

- **Strengthen voluntary retiree health care and life insurance benefits by continuing to permit overfunded pension plans to fund them.** Section 420 of the Internal Revenue Code allows employers with generously overfunded pension plans to use a portion of surplus assets to fund retiree welfare benefits (such as health care benefits and group life insurance coverage) without jeopardizing the security of the underlying pension promise. This bipartisan policy was initially enacted in 1990 on a temporary basis, and the current extension is set to expire at the end of 2025. Many defined benefit plans have managed fixed-income assets to meet pension liability timing, reducing risk, and the need for excess assets while ensuring pension obligations are met. ERIC urges Congress to modernize the surplus asset rules to allow for small transfers with a reduced overfunding threshold and extend the measure well in advance of 2025.

- **Affirm the fiduciary responsibility to optimize financial outcomes for plan participants.** ERISA's duties of prudence and loyalty require plan fiduciaries to operate for the exclusive purpose of providing benefits and defraying expenses. Many factors are relevant when ensuring the best possible financial outcome for plan participants and beneficiaries. ERIC supports the Department of Labor's longstanding policy that plan fiduciaries may not sacrifice investment returns or assume greater investment risks as a means of promoting collateral, social policy goals.

- **Modernize the definition of a Highly Compensated Employee to reflect salaries in the modern skilled workforce.** The IRS has complicated rules to ensure that employee benefit plans do not disproportionately benefit "highly compensated employees" (HCEs), intended for decision-makers regarding those same benefit plans. But the HCE definition no longer reflects the salary trend realities of some highly skilled industries or high-cost regions. As a result, junior employees can face limitations on the contributions they can make or receive under a 401(k) plan. Modernizing the HCE definition by allowing an employer to limit its HCEs to the top-paid 10 percent of workers (rather than the top 20 percent under current rules) would help ensure that more junior employees are not excluded from savings opportunities.

- **Stop unnecessary and harmful PBGC premium increases.** The PBGC's 2021 Annual Report shows that its single-employer program is overfunded by $30.9 billion. ERIC urges Congress to correct arcane budget scoring rules that perversely incentivize using premium increases to offset spending proposals entirely unrelated to the retirement system. Additionally, past increases have caused many employers to leave the system, reducing the PBGC's premium base. ERIC supports prohibiting premium increases from being used as a funding offset in the future and calls on Congress to prevent further increases and consider lowering the current level of premiums in light of the PBGC's improved financial status.

- **Allow workers to access retirement savings in a personal emergency**. Short-term financial needs and risks create significant financial stress for employees, undermine their productivity, and interfere with their retirement savings. It is crucial to recognize the holistic and lifetime nature of financial wellbeing (including retirement) and strengthen the connections between short-term financial concerns and adequate savings for retirement. For example, ERIC supports permitting retirement savers to access up to $1,000 from a retirement savings account for personal emergencies, subject to some conditions. Allowing participants access to savings for emergencies will encourage their participation in retirement programs – particularly for those who may be hesitant to "lock away" money in case they will need it later.

- **Defend ERISA preemption against efforts to regulate retirement plans at the state level.** The ability of large employers to follow a single set of federal rules is critical to their ability to provide benefits to their workers, families, and retirees located across the country. ERIC has been vigilant in protecting ERISA preemption and urges Congress to continue to ensure that employers who voluntarily provide retirement benefits can do so on a uniform basis.

CONCLUSION

Thank you for the opportunity to share the perspective of large plan sponsors on these important employee benefits issues. We encourage members of the Committee to consider these recommendations and the critical roles that employers play in promoting retirement security. ERIC and our member companies look forward to continuing to discuss these issues and our proposed solutions with Committee Members and staff.