ERIC | THE ERISA INDUSTRY COMMITTEE
*Shaping benefit policies before they shape you.*

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Delivered Electronically to RiseAndShine@help.senate.gov

June 1, 2022

U.S. Senate Committee on Health, Education, Labor & Pensions
Attn: Chair Patty Murray and Ranking Member Richard Burr
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Senators Murray and Burr:

On behalf of The ERISA Industry Committee (ERIC) and our large employer member companies, thank you for the opportunity to comment on the discussion draft of the *Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act of 2022*. We write to congratulate you on developing a draft of bipartisan legislation that would strengthen the private sector retirement system and to provide suggestions to improve the draft.

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.

We are pleased that the draft of the *RISE & SHINE Act* incorporates many of the recommendations that ERIC put forward in connection with your March 29, 2022, hearing titled "Rise and Shine: Improving Retirement and Enhancing Savings." The draft also contains a number of provisions included in the bipartisan, House-passed *Securing a Strong Retirement Act*. More specifically, like the House-passed bill, your discussion draft includes provisions ERIC supports that:

- **Update the cap for transferring former employees' retirement funds** to an IRA from $5,000 to $7,000
- **Ease administrative burdens on plan sponsors** by reducing unneeded notices and requiring regulators to review and make recommendations to simplify current disclosures

- **Clarify the rules for recoupment** of inadvertent retirement plan overpayments to innocent participants

The draft bill also includes improvements that were not in the House-passed bill. ERIC strongly supports these measures in The RISE & SHINE Act that:

- **Facilitate emergency savings.** The pension-linked emergency savings accounts established in the *Emergency Savings Act of 2022* would permit a workers to access funds saved in the account without tax penalty. Allowing participants access to savings for emergencies will encourage participation in retirement programs – particularly for those who may be hesitant to "lock away" money in case they need it later. ERIC supports including the *Emergency Savings Act* and other policies that help encourage access to savings for emergency cases.

- **Strengthen 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 (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. Your bill would extend that deadline through 2032.

- **End unnecessary annual increases in variable-rate premiums.** The Pension Benefit Guaranty Corporation's (PBGC) 2021 Annual Report shows that its single-employer program is overfunded by $30.9 billion. Therefore, any increase in single-employer PBGC premiums is unwarranted and would thus be entirely unrelated to the PBGC's or participant needs. Nevertheless, the variable rate premium is automatically increased annually by an inflation factor. Eliminating these increases is a good step to aligning PBGC premiums with program needs, which is critical to the long-term stability of the pension system.

## Additional Comments

ERIC also offers the following additional comments on the draft legislation:

- **Pension Risk Transfer Review is Unnecessary**: ERIC is concerned about any potential regulatory changes that could make it harder for defined benefit pension plan sponsors to manage the risk associated with their plans. Single-employer defined benefit plans are provided on a voluntary basis, generally funded entirely by the employer sponsor, and subject to myriad funding, fiduciary, and other rules that impose significant financial burdens. Imposing additional rules on employers that limit their ability manage this risk would be needlessly harmful and burdensome. In fact, the mere specter of new regulations may encourage plan sponsors to leave the system. Therefore, we are skeptical that an open-ended review of the pension risk transfer interpretive bulletin, as required by

Sec. 105, will yield helpful results. On the contrary, we believe it could drive employers from retaining their pension plans.

- **Plan Disclosures Should Be Made Simpler:** ERIC supports ensuring that benefit plan participants have access to information regarding plan costs to help inform their decision-making and promote financial literacy. For example, ERIC has recommended simplifying regarding a number of these notices, including fee disclosures, summary plan descriptions, annual benefit statements, and many others. Section 301 of the draft, directing the Department of Labor to review its regulations and provide legislative recommendations, should also include a directive to reduce costs and complexity of these disclosures.

- **Lump-Sum Disclosure Proposal Should be Modified**: Section 303 would be improved by modifying the 90-day advance notice to reference the start date of the annuity rather than the participant's election. Additionally, plan sponsors would be required to disclose whether the plan's lump sum would be "reasonably likely" to replicate the stream of payments by purchasing a commercial annuity. Because annuity prices could vary daily and retail products may not include identical features, this disclosure should provide greater flexibility by eliminating the "reasonably likely" statement and replacing it with a statement that the lump sum could be used to purchase a commercial annuity, but that the annuity may have a different value and features than benefits under the plan.

- **Lost and Found Database Needed:** ERIC's member companies are especially susceptible to difficulties when trying to locate missing participants because their plans tend to be larger and more complex, with more significant acquisition histories that span decades. ERIC supports the provisions in the House-passed bill creating a federal "Lost and Found" searchable database of retirement accounts to help participants find former employers and determine whether they could be receiving distributions. With data security safeguards, such a database would help participants receive earned benefits and decrease the number of missing participants. We urge you to include this measure as this bill advances.

- **Effective Date Consideration Appreciated:** We appreciate your sensitivity to the burdens that could caused by an effective date occurring too quickly after passage. Thank you for continuing to seek feedback with respect to the appropriate effective date of these changes.

- **Plan Sponsor Mandates Counterproductive:** Importantly, we were pleased to see that certain proposed mandates that large plan sponsors oppose were not included in the draft, including requirements for paper distribution of plan disclosures, mandatory automatic enrollment, and expanding spousal consent requirements for defined contribution plans before the Government Accountability Office completes the review you requested. As this proposal progresses, we urge you to oppose including those provisions in this bill.

Again, thank you very much for the opportunity to comment on this draft legislation and for your leadership in helping to strengthen private sector retirement savings.

Sincerely,

Andrew Banducci