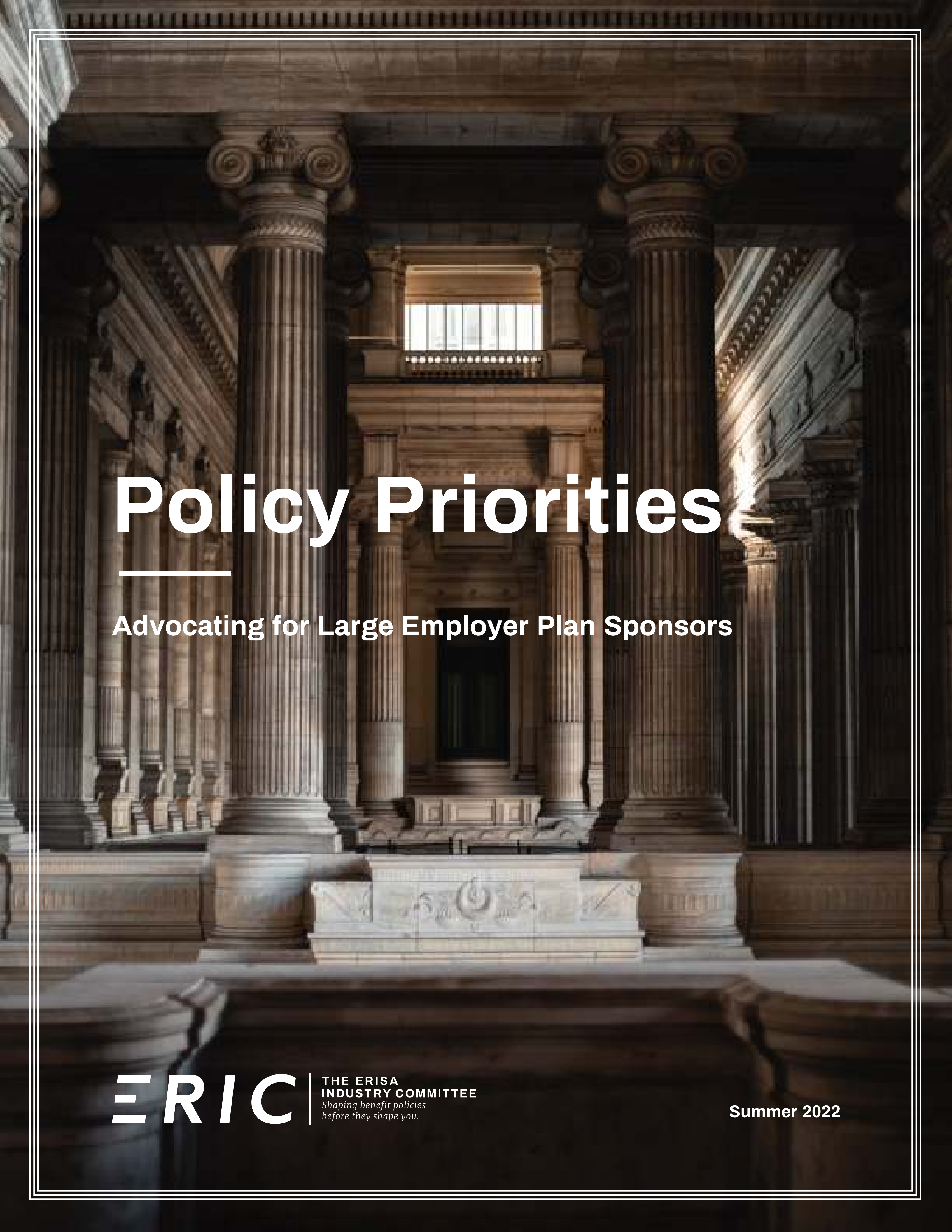


Policy Priorities

Advocating for Large Employer Plan Sponsors

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

Summer 2022

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 serves as 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 the Employee Retirement Income Security Act's (ERISA) protection from a patchwork of differing 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 is the critical bridge between our large employer member companies and policymakers at the federal, state, and local levels.

ERIC is the critical bridge between our large employer member companies and policymakers at the federal, state, and local levels. Every day, we engage with our member companies to understand the challenges they face in providing world class employee benefits while navigating a complicated morass of government red tape. Our winning strategies for surmounting these hurdles include creative legislative and regulatory advocacy; lobbying for large plan sponsors generally without using member companies' names and brands; and shaping public opinion with a focus on results.

ERIC defends the interests of our members in federal and state legislatures, regulatory agencies, and courts where mandates are increasingly developed and expanded. ERIC takes pride in generating achievable, proactive opportunities to improve the landscape using the influence, know-how, and reputation we've cultivated in the decades since ERISA was enacted.

ERIC's policy agenda is focused on improving employee wellbeing and financial security; increasing flexibility and opportunity; reducing costs and administrative burdens; and helping large employers continue to deliver uniform benefits. ERIC advocates for measures that ensure continued tax preferences for employer-sponsored benefits and exclusive federal regulation of nationwide benefits plans through ERISA preemption.

Congress, federal agencies, state legislatures, and the courts continuously act in ways that impact large plan sponsors. ERIC uses our political acumen, benefit rule expertise, and knowledge of member company priorities to take advantage of opportunities and challenges to advance measures important to our member companies. Some efforts are longer-term, and others can be almost immediate, all dependent on current-day politics, policy, and advocacy. Developing and updating this comprehensive list of priorities allows ERIC to find and create opportunities to shape public policy before it shapes large plan sponsors.

Protecting ERISA and Working to Ensure National Uniformity

Large employers operating in multiple states need the consistency and certainty provided by ERISA to ensure that they can offer uniform, national benefits to their employees, families, and retirees. ERISA protects employers from state mandates by keeping regulation at the federal level so that benefits plans can be administered fairly and uniformly across the country. And ERISA provides employer plan sponsors with the flexibility and autonomy to create the right benefits plans for their workforce.

ERIC lobbies to preserve and reinforce ERISA preemption and defend plan sponsors' ability to design benefits that drive value. And we oppose any state attempt to mandate reporting or other obligations on companies that offer federally regulated plans.

Prevent or eliminate policies that violate ERISA. ERIC works to educate policymakers about the importance of ERISA and to head off problematic proposals before they are enacted. This has included policies such as state mandates that violate Health Savings Accounts rules, section 1332 waivers that would vary employer-shared responsibility requirements within a state, health insurance mandates that require different spending levels than the Affordable Care Act, state attempts to mandate reporting or other obligations on companies that offer a federally regulated retirement plan, and more. When these proposals do make it on the books, ERIC works to repeal or overturn them.

Protect employers from burdensome state administrative requirements. Many states are working to understand health care spending trends and patterns by gathering up claims data, and they seek to add self-insured claims data to their collections. ERIC has supported efforts in the U.S. Supreme Court to push back on these efforts, but some states persist. As such, ERIC advocates for states to get access to robust claims data through a federal clearinghouse, ensuring employers report only to the federal Department of Labor and not to any state authority.

Prevent costly new mandates on ERISA plans. While ERIC member companies provide robust, comprehensive coverage for their beneficiaries, we believe plan design should be the purview of plan sponsors, not of politicians. ERIC works to prevent mandates that drive up costs or reduce flexibility. This includes proposals to restrict or eliminate medical management like step-therapy, benefit mandates such as a requirement for all plans to cover a specific treatment or drug, reimbursement mandates that attempt to force self-insured plans to pay specific amounts for products or services, and more.

Address the patchwork of paid leave programs. ERIC member companies provide generous paid leave programs to their nationwide workforces. Despite this, they are subjected to the proliferation of state and local paid leave laws that are administratively burdensome and undermine the ability of employers to offer uniform benefits on a nationwide basis. Large employers that provide generous benefits should be exempt from the growing patchwork of requirements created by states and localities, including recordkeeping and reporting obligations, complicated and varied notice mandates, and coordination of employer benefits with state programs. ERIC strongly supports a safe harbor for companies that already provide robust benefits.

Health Care: Challenges and Priorities

Challenge - Markets: Employers pay 80 percent of health care costs on behalf of employees, families, and retirees, but often this spending results in poor value for the money spent. This is driven by a lack of functioning, open markets in the health care system, depriving employers of information needed to make the best plan design decisions, and resulting in a lack of competition which drives costs up and quality down. ERIC works through federal and state advocacy to restore these markets, with proposals that would:

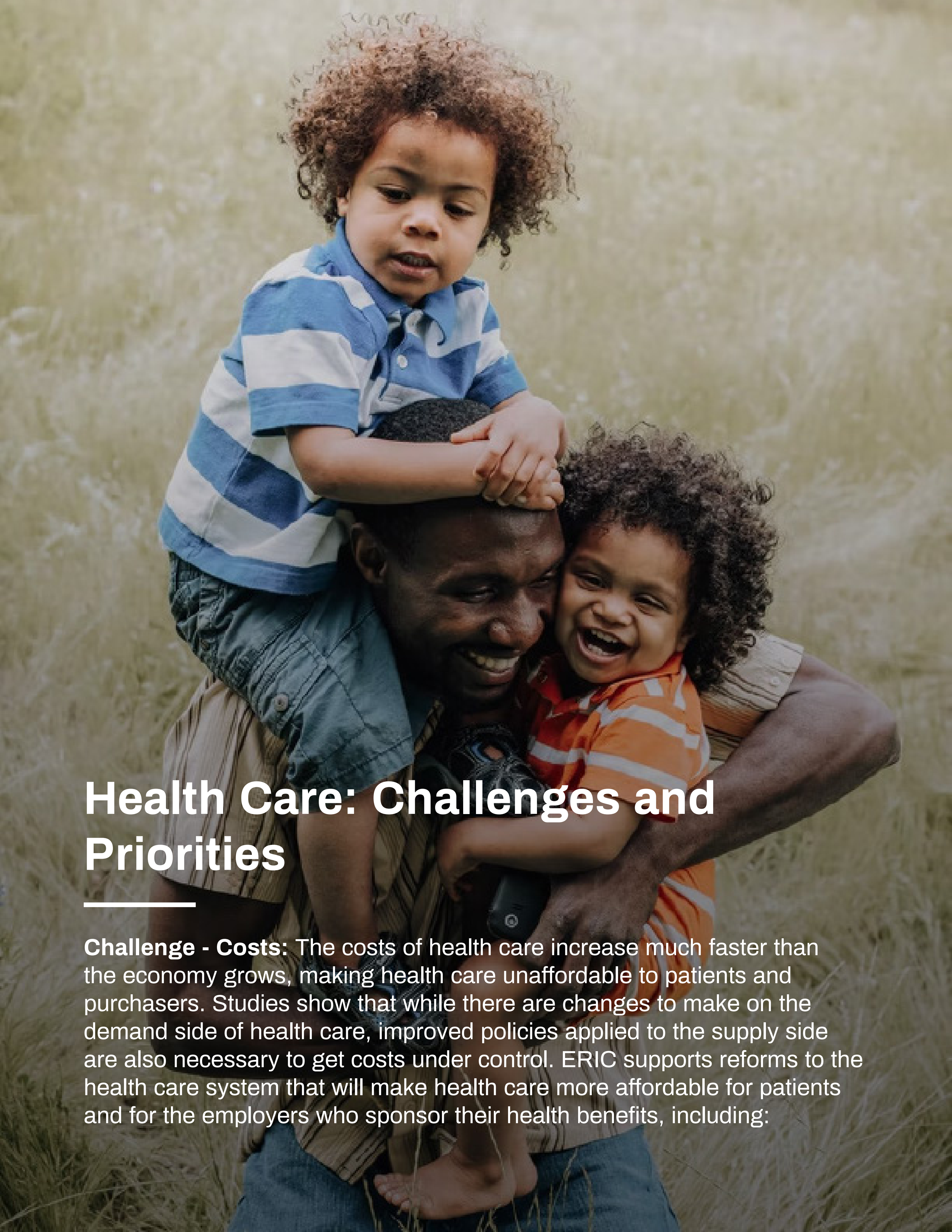
Implement transparency in health care markets. Employers, working with their service providers, can use price and quality information to change the incentives in the health care system for both patients and providers. But this requires legislative and regulatory change. Employers need ownership of their own health care claims data, access to the real price of services and products (including prescription drugs), information about the quality and outcomes associated with individual doctors and facilities, and robust access to patient safety data.

Balance health care treatments, products, and care innovations with market competition. ERIC strongly supports the ability of innovator companies to invent new health care options for patients. At the same time, new products and treatments will not benefit patients if they are unaffordable and never face market competition. ERIC supports policies that balance protections for innovators with requirements that, after a set amount of time, the companies ensure robust market competition, such as from generics and biosimilars in prescription drug markets. This includes eliminating product lifecycle management strategies that effectively extend government-granted market exclusivity beyond the periods designated by Congress, appropriately regulating pharmacy benefit managers to ensure that competition takes place, speeding safe and effective innovator and competitor products to market, and ensuring that U.S. consumers are not disadvantaged compared to citizens of other industrialized nations.

Create an environment that encourages "smart shopping" by patients. While not all health care services are "shoppable," many interactions with the health care systems give patients an opportunity to choose a provider or facility, choose between treatments, and otherwise steer the direction of health care spending. ERIC believes that improvements to consumer-directed health plan rules, including account-based plans, can encourage patients to seek better value and quality when making choices about health care.

Align health care regulation with other sectors of the economy. ERIC works to fix market incentives and patient protections by applying the same kinds of rules and expectations to the health care system, as are applied in other circumstances. This includes requiring medical providers to send timely and accurate bills or forfeit payment; requiring clear indications of whether providers are in-network and whether they are accepting new patients; and eliminating gaming of the system by supporting efforts like honest billing and site-neutral payments.

Ensure health care markets are competitive. Employers support changes that would reduce consolidation (especially of hospital systems and physician practices), increase choices for patients, address existing monopolies (such as those held by kidney dialysis companies), and prohibit anticompetitive contracting practices often used by providers to thwart value-driven plan designs.



Health Care: Challenges and Priorities

Challenge - Costs: The costs of health care increase much faster than the economy grows, making health care unaffordable to patients and purchasers. Studies show that while there are changes to make on the demand side of health care, improved policies applied to the supply side are also necessary to get costs under control. ERIC supports reforms to the health care system that will make health care more affordable for patients and for the employers who sponsor their health benefits, including:

Improve employer flexibility and reduce administrative burdens. Employer plan sponsors are burdened with myriad rules, reporting requirements, and compliance burdens that limit their ability to innovate and improve health benefits. Employers spend vast amounts of money demonstrating compliance to regulators rather than providing health care to beneficiaries. ERIC supports policy changes that reduce needless rules and burdens on employers, promote innovation, streamline reporting and compliance, and reduce spending on red tape.

Promote technology and innovation to increase access to care. ERIC promotes the use of telehealth, remote monitoring, and health technologies that reduce reliance on a given state's provider population and rules, enhances competition by giving patients in-home or out-patient care options, and reduces demands on providers.

Expand wellness and other preventive care. The vast majority of health care expenditures are from a small number of patients with high-cost chronic conditions or catastrophic health issues. Employers are committed to moving plan beneficiaries from "sick care" – in which the focus is exclusively on providing access to providers and treatments when treatment is acutely needed – to "health care" that invests in keeping patients healthy and managing chronic conditions. ERIC works to expand employers' ability to create and manage wellness programs, experiment with capitation and accountable care, and change plan design to encourage healthy behavior by plan beneficiaries.

Implement coordinated care and end "care silos." Because of a lack of coordination between the various plans, vendors, doctors, labs, facilities, and other points of contact that a patient has with the medical system, patients often get sub-optimal care that includes wasteful spending on duplicative or conflicting treatments and tests. ERIC works to improve care coordination by advocating for the full implementation of comprehensive electronic medical records owned by the patient and which do not allow for data blocking. Further, ERIC supports policies that reorient the health care system to help patients obtain medical homes with advanced primary care and engage providers in managing the patient's whole health.

Reform the payment system to incentivize value. The U.S. health care system is built around a "fee-for-service" model that rewards providers based on the *volume* of products and services they provide. ERIC believes that providers should instead be paid based on the *quality* of service, the *safety* of care, the *value* provided to the patient, and the *outcomes* achieved. ERIC also supports policies that transform payment in public programs to fully transition the system to one that pays for value rather than volume.

Retirement and Compensation: Challenges and Priorities

Challenge - Flexibility: Large plan sponsors invest in their employees and their financial wellness, including retirement security. Sometimes, federal rules get in the way of the flexibility that creative employers need to offer helpful options to their workers. ERIC promotes policies that reduce barriers and increase opportunities to make the most from retirement savings.

Treat student loan payments and other qualifying contributions as elective deferrals for the purpose of employer matching contributions. Employers are interested in helping employees save for their futures by establishing student loan matching programs. ERIC is working with Congress to allow employers with 401(k), 403(b), SIMPLE and governmental 457(b) retirement plans to make matching contributions for workers as if their student loan payments and contributions to certain other tax-preferred accounts were salary reduction contributions.

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 well-being (including retirement) and strengthen the connections between short-term financial concerns and adequate savings for retirement. ERIC supports permitting retirement savers to access up to $1,000 from a retirement savings account for personal emergencies, subject to some conditions, as well as proposals permitting plan sponsors to offer limited emergency savings accounts as part of retirement plans. 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 will need it later.

Expand cafeteria plans to allow participants additional pre-tax benefit options such as student loan repayment, disability insurance, long-term care insurance, longevity insurance, and retirement planning services. Cafeteria plans can be effective vehicles for employers to offer and employees to address key short-term financial needs and risks. They are also used to purchase key insurance benefits such as disability insurance, long-term care insurance, longevity insurance, and retirement planning services. These benefits and coverages could be bought under a cafeteria plan on a pre-tax basis. ERIC supports making these benefits qualified benefit options for cafeteria plans.

Provide additional savings opportunities for those close to retirement by increasing catch-up limits in plans. Because younger workers often face immediate financial pressures that conflict with saving for retirement, the law permits higher elective deferral limits to help older workers “catch up” in retirement savings. These catch-up limits should be further raised to help those closest to retirement. Additionally, workers of all ages should be provided with some flexibility in making elective deferrals to 401(k) plans in connection with unpaid leave.

Increase the age for required minimum distributions. The required minimum distribution (RMD) rules are aimed at preventing individuals from using their qualified plans and IRAs to accumulate significant assets for future generations. However, the current RMD rules too rigidly affect smaller account balances and the flexibility needed to provide effective annuity-like income distribution options that support successful retirement outcomes. We support increasing the age when distributions must begin.

Retirement and Compensation: Challenges and Priorities

Challenge – Costs and Administrative Burdens: Some of the rules governing retirement plans are outdated and needlessly technical and complex. These arcane rules can inadvertently harm both workers and job creators by unnecessarily increasing costs and administrative burdens, creating inefficiencies, and reducing opportunity. Sometimes, even very small improvements in the law can yield meaningful results. ERIC works to shape these rules to help large plan sponsors efficiently provide generous benefits in a cost-effective way. We support legislation and regulations that would:

Simplify reporting and disclosure requirements by eliminating redundant and unnecessary disclosures. The Tax Code and ERISA include many rules requiring and governing the reports, disclosures, and notices that employers and qualified plans must provide to employees and participants. We believe that these communications are complex, burdensome, and costly and are less informative or effective for employees and participants than they should be. ERIC supports proposals that direct the Department of Labor (DOL), Treasury, and the Pension Benefit Guaranty Corporation (PBGC) to issue regulations to consolidate and simplify the existing ERISA and tax reports, notices, disclosures, and other information relating to deferred compensation, pension, profit-sharing, and other retirement plans.

Maintain electronic disclosure as an option for default distribution. ERIC opposes efforts to undermine the 2020 DOL regulation permitting plan sponsors to provide electronic delivery as the default option for providing retirement plan notices. 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 useful and targeted information). The regulation included many safeguards, including participant internet access and the ability to opt out. There is no reason to take a step back from this positive development.

Not impose new burdensome administrative requirements. ERIC opposes legislative efforts that make retirement plans more costly and less flexible, especially where the law already includes appropriate safeguards. Examples include proposals that would expand administrative requirements for routine distributions in defined contribution plans, make it harder for defined pension plan sponsors to manage their risk without adding corresponding value for plan participants, or require plans to provide costly, one-size-fits-all written disclosures. New burdens on employers should always be subject to analysis of costs and benefits.

Refrain from imposing fiduciary requirements on investments available through a brokerage window. Fiduciaries of large plans provide prudently selected, designated investment alternatives for the average participant. Additionally, some plans include brokerage windows for more sophisticated investors who have the resources to evaluate a much broader variety of investments available through the brokerage window. Plan sponsors make concerted efforts to ensure that participants who invest in the brokerage window are aware of the risks.

ERIC does not believe new fiduciary obligations would be useful or necessary regarding brokerage windows offered in plans, and we were pleased that the DOL's ERISA Advisory Council recently recommended against new guidance on brokerage windows at this time. Any guidance that might restrict or inhibit the use of brokerage windows as part of a plan's design could have the unintended consequence of limiting investment opportunities for the very sophisticated participant investors. At minimum, any such attempt to impose new requirements must go through a notice and comment rulemaking process and must not be *de facto* imposed by subregulatory guidance.

Expand the ability of plans to self-correct plan errors. Plan sponsors and administrators should be permitted to play a more significant role in identifying and correcting plan errors, including excess, insufficient, and missed contributions, compensation and service, accrued benefit, and other determinations and calculations. In particular, employers should be allowed more opportunities to self-correct routine, common operational, and plan document mistakes without incurring fees and federal agency oversight and approval. To this end, ERIC calls for expanding the Employee Plans Compliance Resolution System (EPCRS) and the Voluntary Fiduciary Correction Program (VFCP) to increase compliance and reduce the cost of plan administration without adversely affecting participants' benefits.

Disincentivize frivolous class-action lawsuits. ERISA class-action suits challenging the fees, expenses, and investments options in large 401(k) plans continue to be filed. These cases are often based on hindsight analysis and do not allege harm to plan participants based on an action or omission the fiduciaries made in selecting or monitoring plan funds. However, employers often settle to avoid protracted, expensive litigation. While some claims have merit, changes to the law are needed to discourage frivolous lawsuits. ERIC supports clarifying pleading standards and ensuring plan participants are the primary beneficiaries of any recovery or settlement.

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. Therefore, any increase in single-employer PBGC premiums would be unwarranted and entirely unrelated to the PBGC's or participant needs. ERIC urges Congress to correct arcane budget scoring rules that perversely incentivize using premium increases to offset spending proposals completely 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.

Expand safe harbor plan designs. Expanding the 401(k) rules to allow for additional designs will increase savings opportunities and promote positive retirement outcomes. For example, the automatic contribution safe harbor's permitted maximum elective deferral should be increased from 10% to 15% of pay. ERIC also advocates for other efforts to expand the permissible safe harbors from the nondiscrimination rules in order to expand participant access. ERIC opposes efforts to mandate that existing plans automatically enroll employees.

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 don't 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% workers (rather than the top 20% under current rules) would help ensure that more junior employees are not excluded from savings opportunities.

Responsibly modernize multiemployer-plans. While financially troubled multiemployer plans are set to receive relief due to legislation enacted in 2021, there continues to be congressional interest in addressing the multiemployer system. Reform proposals to strengthen withdrawal liability or contribution obligations should avoid counterproductive results like employer bankruptcies and weakening the PBGC premium base. Additionally, any reforms should give employers and unions the flexibility to pursue innovative plan designs.

Retirement and Compensation: Challenges and Priorities

Challenge – Help Participants: Well-intentioned but counterproductive federal regulations sometimes harm workers and retirees with inflexible directives and limits on efficiently using benefit plan resources. ERIC supports policies that help plan participants get the most from employer-provided benefit programs. We support policies that:

Affirm the 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 longstanding policy that plan fiduciaries may not sacrifice investment returns or assume greater investment risks as a means of promoting collateral social policy goals.

Craft lifetime income illustrations to help participants. ERIC continues to maintain that the lifetime income-related disclosures required under the SECURE Act of 2019 should not be based on a static set of one-size-fits-all assumptions but instead use online modeling tools to allow participants to interact meaningfully with disclosed information. Online tools allow participants to choose retirement dates, expected length of retirement, changes in amount and timing of future plan contributions, changes to the value of non-plan financial assets, and other critical information that varies by individual. ERIC's advocacy recognizes that one-size-fits-all disclosure mandates could easily confuse the many participants in plans that do not offer annuity options and that varied workforces would benefit from more meaningful disclosure.

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. Additionally, many defined benefit plans have reduced plan risk by managing fixed income assets to meet pension liability timing. 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.

Provide a safe harbor for the recovery of retirement plan overpayments. Plan sponsors have a fiduciary obligation to ensure that retirement plans are adequately funded and that every participant receives the benefits that have been promised. However, many plan sponsors do not want to burden retirees with paying back often small amounts that were mistakenly overpaid. ERIC supports legislation that would provide a safe harbor to allow well-funded plans to forego recouping these overpayments that were not the fault of the retiree.

Create a searchable Retirement Savings Lost and Found. 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 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.

ERIC | THE ERISA INDUSTRY COMMITTEE

Shaping benefit policies before they shape you.