

October 25, 2022

Dear Members of Congress:

On behalf of The ERISA Industry Committee (ERIC) and our large employer member companies, **we strongly urge Congress to finalize and pass a comprehensive, bipartisan retirement bill before the end of the year.**

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. As such, ERIC has a strong interest in policies that impact employers' ability to provide cost-effective retirement programs and the ability of employees to receive such benefits.

We are very encouraged that the House of Representatives passed the *Securing a Strong Retirement Act* with more than 400 votes in support. We also commend both the U.S. Senate Committee on Finance and the Committee on Health, Education, Labor & Pensions for their bipartisan packages, the *Enhancing American Retirement Now Act* (EARN Act) and the *Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act* (RISE & SHINE Act).

**As negotiators collaborate to combine these proposals, ERIC strongly urges that the final package should:**

- **Ease administrative burdens on plan sponsors.** All three bills take steps to reduce unneeded notices and require regulators to review and make recommendations to simplify current disclosures. 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 supports simplifying fee disclosures, summary plan descriptions, annual benefit statements, among others. We commend both the House and Senate for including provisions directing regulators to make recommendations, although these proposals should be improved to include a directive to reduce costs and complexity of disclosures. We also support eliminating disclosure requirements with respect to unenrolled participants, as included in all three bills. Additionally, we support provisions in the SSRA and the EARN Act expanding the IRS' Employee Plans Compliance Resolution System, which allows self-correction of plan errors. We also support proposals in the SSRA that permit plans to offer small financial incentives to encourage participation.

ERIC does not support Section 314 of the SSRA, which takes a step away from electronic delivery of plan disclosures. DOL's 2020 regulation allowed plans to offer notices and information more quickly and usefully (for example, by embedding internet links to provide beneficiaries useful and targeted information). And, the Department of Labor reported *this year* that the regulation's many safeguards make it "unlikely to have any negative impact" on seniors and individuals residing in rural or remote areas. There is no reason to take a step back from this positive development.

ERIC also opposes plan design mandates, including with respect to automatic enrollment. Tax credits, such as those included in the EARN Act, would be effective at achieving the policy goal of expanding coverage among small employers without negatively affecting plan sponsors.

- **Support increased retirement savings by allowing employers to make "matching contributions" for employee student loan payments.** In 2018, the IRS issued a Private Letter Ruling allowing a plan sponsor to contribute to a 401(k) plan on behalf of plan participants who pay down student loan debt but do not necessarily contribute to the employer's 401(k) plan. Since the PLR applies only to the employer who receives the letter, Congress should include a provision allowing other employers to support their workers in this way. Both the EARN Act and the SSRA included such provisions, which we strongly support.
- **Facilitate emergency savings for working Americans.** ERIC advocates for Congress to provide options to plan sponsors and participants to promote both retirement savings and emergency savings. 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. The pension-linked emergency savings accounts established in the *Emergency Savings Act*, as included in the RISE & SHINE Act, would permit workers to access funds saved in the account without tax penalty. The *Enhancing Emergency and Retirement Savings Act*, as included in the EARN Act, creates a limited exemption from early withdrawal penalties for emergency expenses. ERIC supports including both policies in the final package.
- **Continue to permit overfunded pension plans to use assets to fund retiree health care and life insurance benefits.** 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. ERIC strongly supports the proposal included in the EARN Act that would extend the deadline through 2032 and modify the threshold for *de minimis* transfers to enable more employers with overfunded pension plans to continue providing retiree welfare benefits.

- **Provide sufficient flexibility and realistic implementation timeframes.** We appreciate your continued sensitivity to the burdens that could be caused by effective dates occurring too quickly after passage. Our member companies are mindful that aggressive effective dates, when coupled with a backed-up regulatory process that is still implementing provisions of the 2019 *Setting Every Community Up for Retirement Enhancement (SECURE) Act*, create enormous uncertainty and practical challenges. We appreciate provisions delaying effective dates of new plan mandates until at least one year after the promulgation of regulations implementing new requirements, which was the approach taken in the RISE & SHINE Act with respect to the requirement to extend coverage to certain part-time workers after two years of service. Thank you for continuing to seek feedback with respect to the appropriate effective date of these changes.
- **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.
- **Create a Lost and Found Database.** ERIC's member companies are especially susceptible to difficulties when trying to locate missing participants because their plans tend to be large and complex, with significant acquisition histories that span decades. ERIC supports the provisions 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. However, to minimize the administrative burdens on plans, Congress should be very specific about the information that the agencies are to collect; as such, a provision empowering an agency to collect "such information...as required" (such as the proposal currently reflected in the SSRA) should not be included in the final bill.
- **Omit a review of pension risk transfer guidance.** 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 to 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 both the SSRA and the RISE & SHINE Act, will yield helpful results. On the contrary, we believe it could drive employers from retaining their pension plans.

- **Omit new disclosure requirements for lump-sum offers.** ERIC is concerned that additional disclosure for offers of lump sum buyouts will be complex, burdensome, and potentially confusing for participants. If a proposal similar to Section 303 of the RISE & SHINE Act must be included, the 90-day advance notice should be modified to reference the start date of the annuity rather than the participant's election. Additionally, under that proposal, 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 and that the annuity may have a different value and features than benefits under the plan.
- **Clarify the rules for recoupment of inadvertent retirement plan overpayments to innocent participants.** All three bills include provisions providing a safe harbor to allow well-funded plans to forego recoupment of overpayments that were not the fault of the retiree. ERIC supports inclusion in the final package.
- **Update the cap for transferring former employees' retirement funds to an IRA from \$5,000 to \$7,000.** Enacting this proposal, as included in the SSRA and the RISE & SHINE Act, is a reasonable update that will provide additional flexibility for plans.
- **Provide additional savings opportunities for retirement.** ERIC supports provisions in the SSRA and the EARN Act that would increase the age at which minimum required distributions begin and increase the "catch up" contribution limits for savers close to retirement. We also support provisions facilitating automatic portability of retirement plan funds when workers change employers.

ERIC thanks the Chairs and Ranking Members of the House and Senate tax and labor committees, as well as countless other members who have developed proposals to help Americans retire with financial security. **We look forward to being able to support a legislative package this year that will improve retirement savings for millions of workers.** If you have any questions, please contact me at [abanducci@eric.org](mailto:abanducci@eric.org) or by calling 202-789-1400.

Sincerely,



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