

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

Policy Priorities

Advocating for Large Employer Plan Sponsors



ERIC is a national advocacy 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. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district.

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.

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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.

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 conflicting state mandates by keeping regulation at the federal level so that benefits plans can be administered fairly and uniformly across the country. ERISA also provides employer plan sponsors with the flexibility and autonomy to create benefits plans that best serve their workforce.

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



Prevent or eliminate policies that violate ERISA. ERIC educates policymakers about the importance of ERISA preemption and heads off problematic proposals before they are enacted. This has included policies such as state mandates that violate Health Savings Accounts (HSA) rules, Affordable Care Act (ACA) Section 1332 waivers that would change employer shared responsibility requirements within a state, health insurance mandates that require different spending levels than the ACA, attempts to mandate state registration or certification of federally regulated employer retirement plans, state policies that seek to dictate the design and administration of self-insured employer plans via control of the pharmacy benefit managers (PBMs) that administer them, and more. When these proposals do make it on the books, ERIC works to overturn them in the courts or state legislatures.



Protect employers from burdensome state administrative requirements. Many states have attempted to place recordkeeping and reporting burdens on large employer plans in order to better understand health care spending trends and patterns. Despite a U.S. Supreme Court ruling against such practices, some states have continued efforts to gather claims data, including self-insured claims data. As such, ERIC advocates for states to access claims data through a federal clearinghouse, ensuring employers report only to the U.S. 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 misguided proposals to restrict or eliminate medical management practices 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 have long been at the forefront of providing generous paid leave programs to their nationwide workforces. Nevertheless, states and localities are increasingly enacting paid leave programs that include costly recordkeeping and reporting obligations, arcane legal definitions, complicated and varied compliance processes, and inefficient coordination with available employer benefits. These laws undermine the ability of employers to offer uniform benefits nationwide. Even worse, these challenges have a counterproductive impact on existing private paid leave benefits, forcing employers to divert resources that could otherwise be spent on their employees. Large employers that provide generous benefits should be exempt from this growing patchwork of incompatible requirements. ERIC therefore continues to support a federal “safe harbor” that would grant relief from state laws to employers who design and provide nationwide benefits which meet federal standards. ERIC also supports incentivizing those states that have existing programs to harmonize their programs, reducing compliance and administrative burdens and ultimately helping workers.



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 and accountability in health care markets. Employers can use price and quality information from across the continuum of health care stakeholders 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, information about the quality and outcomes associated with individual doctors and facilities, as well as robust access to patient safety data. Accountability reforms, such as ensuring providers are engaging in honest billing practices and pharmacy benefit managers (PBMs) are not gaming the commercial drug benefit system, are needed in addition to access to meaningful, accurate, updated, and complete 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, products can face 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, 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. This also includes preventing the creation of misleading legal distinctions that bar patient access to cost-saving generic and biosimilar drugs without clinical justification.



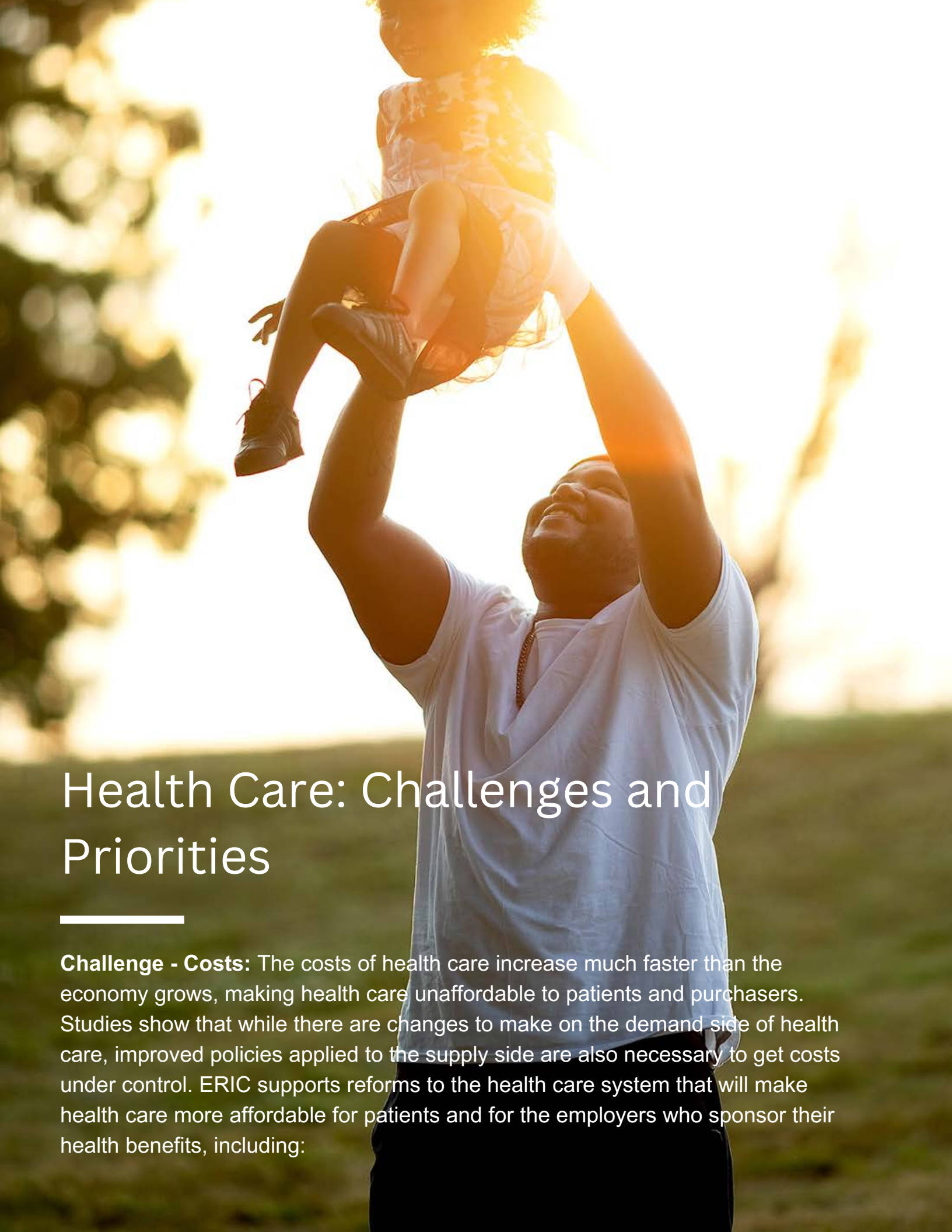
Create an environment that encourages “smart shopping” by patients. While not all health care services are “shoppable,” many interactions with the health care systems give patients an opportunity to choose a provider or facility, choose between treatments, and otherwise steer the direction of health 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 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 digital health and innovation to increase access to care. ERIC promotes the use of telehealth and other emergent health care technologies such as wearable devices, and advocates for federal legislation to address regulatory barriers to the ability of employees to fully access the benefits such innovation holds. Additionally, ERIC's state advocacy efforts include focusing on ways to alleviate reliance on a given state's provider population, foster competition by giving patients in-home or out-patient care options, and ultimately work to lower health care costs. This includes pushing for technology-neutral telehealth rules, medical standards of care that are no more restrictive than in-person treatment, and improved interstate licensure and practice processes.



Expand wellness and other preventive care. The vast majority of health care expenditures are on behalf of 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 comprehensive medication management.



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 - Implementing SECURE 2.0 and Avoiding Overregulation:

The SECURE 2.0 Act of 2022 was the most comprehensive set of enhancements to the retirement rules in a generation. Congress charged regulators with implementing this complex law, which included more than 90 provisions affecting tax preferences, plan design and administration, and participant rights. ERIC is working to:



Provide employers procedural certainty regarding the provisions permitting employers to make retirement plan matching contributions for workers as if their student loan payments were salary reduction contributions, and permitting employers to create emergency savings “side car” accounts. Employers are interested in providing these options, but first need regulators to establish workable rules of the road.



Simplify reporting and disclosure requirements by shaping regulatory provisions to eliminate redundant and unnecessary disclosures and reducing complexity. The Internal Revenue 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, and SECURE 2.0 included several provisions modifying these requirements. Communications that are complex and costly are often less informative for employees and participants than they should be.



Minimize the complexity of the new catch-up rules. SECURE 2.0 required that individuals with wages over \$145,000 in the prior year may only make catch-up contributions on a Roth basis. The IRS granted a two-year delay so recordkeepers could implement the requirement, and now should also confirm that plan sponsors have flexibility related to plan design that can help shape this provision’s effects.



Clarify the recoupment and self-correction rules. 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. SECURE 2.0 included a provision creating a safe harbor for employers to decide not to seek recoupment of certain accidental benefit overpayments, and also sets forth limitations on plans that do decide to recoup. Employers would benefit from further implementing guidance. Additionally, the IRS should interpret the SECURE 2.0 provisions expanding the Employee Plans Compliance Resolution System to provide compliance-minded plan sponsors the flexibility and assurances they need to make necessary corrections.



Establish a workable 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, more complex, and often have significant acquisition histories that span decades. SECURE 2.0 authorized a federal searchable “lost and found” to help participants locate their benefits, which will rely on input from plan sponsors. In establishing this database, regulators should work with employers to ensure that reporting requirements are not overly burdensome.



Clarify that the new automatic enrollment mandate does not apply to existing plans. SECURE 2.0 requires that, beginning in 2025, certain employer plans must include an automatic enrollment feature unless established prior to the date of enactment. Treasury and IRS should clarify that this mandate is inapplicable to plans that can trace their lineage to a grandfathered plan.



Ensure the law works as intended. Congress should enact technical corrections that are needed to ensure the law doesn’t eliminate catch-up contributions or render enhancements to Section 420 excess asset transfer authority less helpful than intended.

A sunset over the ocean with a palm frond in the foreground. The sun is a bright yellow circle on the horizon, casting a warm orange glow across the sky and water. The palm frond is dark and silhouetted against the bright sky.

Retirement and Compensation: Challenges and Priorities

Challenge - Improving Flexibility, Reducing Costs and Administrative Burdens:

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. Arcane rules and fear of frivolous litigation can inadvertently harm both workers and job creators by unnecessarily increasing costs and administrative burdens, creating inefficiencies, and reducing opportunity. ERIC works to shape the laws to help large plan sponsors efficiently provide generous benefits in a cost-effective way. We support legislation and regulations that would:



Ensure efficient regulatory enforcement. ERISA was intended to protect retirement plan participants, but too often, complex and bureaucratic plan audits by regulators devolve into counterproductive fishing expeditions. Plan sponsors report shifting areas of examination, voluminous and irrelevant inquiries, and non-existent timeframes for completion. Participants ultimately bear these increased costs. ERIC supports robust congressional oversight to ensure that workers and retirees are truly served by legal enforcement. Similarly, ERIC opposes proposals to spend even more tax dollars on these programs without improvements to accountability and transparency.



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.



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.



Avoid overregulating new technologies. In an effort to enhance retirement security, retirement plans increasingly use technology to educate participants about investment options and provide retirement planning tools. As artificial intelligence, predictive data analytics, and other exciting and interactive technologies mature, bureaucrats should take care to avoid stifling innovation, one-size-fits-all mandates, and overregulation that ultimately will result in less information and fewer tools in the hands of workers and retirees.



Prevent burdensome new 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 benefit 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. ERIC opposes efforts to mandate that existing plans automatically enroll employees. 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. 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.



Restore electronic disclosure as an option for default distribution. ERIC supports efforts to restore 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 conveniently (for example, by embedding internet links to provide beneficiaries with useful and targeted information). The regulation included many safeguards, including participant internet access and the ability to opt out.



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 in order 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.

The background of the slide features a warm, golden sunset sky. In the foreground, the silhouettes of four people are shown from behind, holding hands in a line. They appear to be walking or standing on a beach or a similar outdoor setting, looking out towards the horizon. The overall mood is peaceful and communal.

Retirement and Compensation: Challenges and Priorities

Challenge - Supporting and Enhancing Defined Benefit Plans: Traditional pension plans remain a valuable benefit provided to millions of Americans, but the rules governing these plans have not kept pace with the times. By reducing red tape and costs, policymakers can preserve these benefits and continue to make them attractive for employers and workers alike. ERIC lobbies to:



Stop unnecessary and harmful PBGC premium increases. The PBGC’s 2023 Annual Report shows that its single-employer program is overfunded by \$44.6 billion. Therefore, any increase in single-employer PBGC premiums would be unwarranted and entirely unrelated to the needs of participants or the PBGC. 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” for spending proposals unrelated to the retirement system in the future, and calls on Congress to prevent further increases and lower the current level of premiums in light of the PBGC’s improved financial status.



Strengthen retirement security by giving overfunded plans flexibility to provide enhanced 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 SECURE 2.0 extended and enhanced the policy through 2032. The policy should continue to be extended and expanded. Additionally, overfunded retirement and retiree health plans should be permitted, subject to conditions, to use surplus assets to provide additional benefits for participants.



Responsibly modernize multiemployer plans. While financially troubled multiemployer plans are receiving 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.

