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

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THE ERISA INDUSTRY COMMITTEE
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

HEARING ON

"RESTORING TRUST: ENHANCING TRANSPARENCY AND OVERSIGHT AT EBSA"

Chairman Allen, Ranking Member DeSaulnier, and Members of the Subcommittee:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to testify today. A well-functioning relationship between employee benefit plan sponsors and their regulators, including the U.S. Department of Labor, is critical for the benefits community, including workers, retirees, and plan sponsors. Today's hearing is a crucial step in improving that relationship. ERIC appreciates the opportunity to contribute to this discussion.

ERIC is a national advocacy organization exclusively representing the largest employers in the United States 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 millions of employees and their families, and are located in every state, city, and Congressional district.

The Committee on Education and Workforce has long been a place where serious legislators have been able to advance solutions to some of the most challenging questions facing the tens of millions of Americans that receive health and retirement benefits at work. Oftentimes, those solutions have been creative and bipartisan, and this Committee deserves credit for its leadership over the decades. The most recent example of this bipartisan work, of course, was the SECURE 2.0 Act that was enacted at the end of 2022.

Today's hearing should be another positive step in strengthening the bipartisan consensus that our private-sector system, while certainly not perfect, is largely successful. Removing impediments, reducing red tape, and recognizing the valuable role that plan sponsors play can help strengthen financial security for American workers and retirees at essentially no cost.

The private sector's delivery of employee benefits is the backbone of health care coverage and retirement savings. More than 150 million Americans get health insurance through employer-provided health coverage, and nearly 100 million private sector workers have access to retirement savings plans such as 401(k) retirement plans.[1] Large employers, including our members, are at the forefront of delivering high quality, high value, and innovative benefits to tens of millions of Americans.

ERIC member companies sponsor health and retirement plans governed by the Employee Retirement Income Security Act (ERISA) and other laws and regulations overseen by the Employee Benefits Security Administration (EBSA), a subagency of the Department of Labor. EBSA has significant enforcement responsibilities on behalf of the workers, retirees, and their families that rely on these plans. We appreciate the role the agency is intended to play. At its best, EBSA is an agency that protects workers and retirees from unscrupulous bad actors, assists employers with legal compliance, helps correct problems with benefits plan design and administration, and identifies regulatory impediments to providing efficient, cost-effective and valuable health and retirement benefits.

ERISA envisions a balanced approach toward enforcement, recognizing that employers seeking to do the right thing are the lynchpin of our system. Rather than reflexively viewing plan sponsors as adversaries, the Labor Department should see plan sponsors as key partners in enhancing health care and retirement security. Instead, our member companies – who invest millions of dollars in compliance and take pride in their benefits programs – too often are the subject of "gotcha" enforcement. Rebuilding this balance will take time and leadership, but we have some good recent developments. For example, the Department of Labor's recently modernized opinion letter initiative is a positive first step toward emphasizing compliance assistance. [2]

Unfortunately, too many employers report audits and investigations relating to their benefit plans that have shifting scope and burdensome demands for irrelevant information. These investigations often stretch on for many years without clear purpose or a timely ending. And at the end, after thousands of dollars and countless hours of compliance and negotiation with enforcement personnel, these burdensome investigations often unveil no wrongdoing, though they may morph into new, tangentially-related inquiries. ERIC member companies report the following troubling, long-term trends:

- **Investigations are taking too long**. Among our membership, we have heard numerous stories of plan audits taking more than five years, and some almost ten years. There is empirical evidence that EBSA is certainly closing fewer investigations. Since at least 2010, the Labor Department

[1] According to the latest available Federal Reserve data, there are about 136 million private sector workers, on a seasonally-adjusted basis. https://fred.stlouisfed.org/series/USPRIV (updated July 3, 2025). According to Bureau of Labor Statistics Data, approximately 70 percent of private sector workers have access to a defined contribution retirement plan, including 86 percent of employees of companies with more than 500 employees. "Employee Benefits in the United States, March 2024" available at https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2024.htm (updated September 2024).
[2] https://www.dol.gov/newsroom/releases/osec/osec20250602.

publicly reports data regarding the number of civil investigations that it has closed. For example, last year, in Fiscal Year 2024, EBSA closed 729 civil investigations. In FY 2010, EBSA closed 3,112 civil investigations.[3] There may well be several reasons for this: a focus on larger cases, for example. But we simply do not know, as EBSA does not report on the number of its ongoing investigations.

- **DOL turnover and handoffs drag out investigations.** Employee turnover and shifting responsibility are realities for all employers. Smoothing the transition to between employees so that key operational responsibilities are seamlessly executed should be a key management goal, whether in government service or the private sector. That is particularly important when there is an ongoing investigation that could affect countless employees and involve potentially millions of dollars. Unfortunately, several members report that after DOL enforcement officials left government service, there were inadequate transitions to new investigators. Similarly, audit responsibilities have been transitioned to different regional offices. When this happens, it is as though the audit begins all over again, with additional costs and more uncertainty for the employer. This management failure certainly contributes to the length of investigations.

- **Lack of responsiveness.** ERIC members also complain that despite the expectation for timely production of requested documents and interviews with plan officials, DOL enforcement officials too often go "radio silent" for months (and in some cases years) on end. This is often accompanied by the refusal to identify with any specificity the alleged area of noncompliance under investigation, any information about acceptable remedies to perceived flaws in plan administration, or any information about when the audit might conclude.

- **Shifting areas of focus.** Too often, these investigations appear to be fishing expeditions without detailed focus. That manifests in overly broad document requests, far beyond those necessary for the purported reason for the investigation. For example, an audit that initially examines whether missing participants are receiving their benefits can morph into a cybersecurity audit. Targeted and focused enforcement should not, as a matter of course, expand into unrelated areas without end in sight.

- **Unpredictable regional office variation.** Many investigations are started by EBSA's regional offices throughout the country. Our members report that there is variation among the different offices in terms of responsiveness and modes of operation. For nationwide employers, this introduces complexity and additional costs.

- **Lack of transparency about DOL collusion with class action plaintiffs' attorneys.** It is clear that ERISA class action litigation is a serious concern for plan sponsors. The past decade has seen an explosion in the number and types of these cases. Too often, they are wholly without merit and are merely brought primarily to extract settlements. However, ultimately, workers and

[3] EBSA publishes its annual enforcement fact sheets. *See, e.g.*, https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results-2024.pdf; https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results-2010.pdf (last accessed July 9, 2025).

plan participants bear the costs of these settlements in the form of higher administrative costs and disincentives to providing benefits in the first place. In this context, DOL's admission that it provides information to class action plaintiffs attorneys is very troubling. DOL may conduct interviews and gather documents from a plan, not take any action, and still "outsource" enforcement to the plaintiffs' bar.

Potential Solutions

After reviewing the DOL data that exists and comparing it with the experiences of large employers, it is clear policymakers need better information. Policymakers should consider the following reforms to ensure that EBSA officials act with transparency, accountability, and appropriately execute their enforcement responsibilities:

- **ERIC supports the *Employee Benefit Security Administration (EBSA) Investigations Transparency Act* (H.R. 2869).** The bill would impose modest annual reporting requirements on EBSA, such as by requiring disclosure about the number of active investigations. The law would also assist policymakers – especially authorizers and appropriators – by highlighting which regional offices are opening investigations. Importantly, the bill would also track the length of the investigations. If an investigation has not concluded after three years, EBSA would be required to explain why. Finally, the bill specifies that the investigation would be considered closed only when there is a closing letter issued to the employer. It also clarifies that an investigation does not start anew just because the topics under investigation shift.

  This is basic, Good Government 101. The *EBSA Investigations Transparency Act* would aid Congress in fulfilling its critical oversight responsibilities, helping to ensure that EBSA's enforcement activities and priorities are transparent and efficient.

- **ERIC supports the *Balance the Scales Act* (H.R. 2958).** This legislation would bring transparency to the coordination between EBSA and the plaintiffs' bar. Since it came to light last year that the DOL collaborates with plaintiffs' attorneys through the use of "common interest agreements," employee benefit plan sponsors have sought to better understand the prevalence and scope of these agreements. In these agreements, the Department of Labor shares information with class action plaintiffs' lawyers, including information about its investigations of the plans. The Department of Labor's Office of the Inspector General has recently announced that it is examining how this information was shared with non-governmental entities.[4]

  Unfortunately, the specter of frivolous and voluminous litigation poses a significant threat to the health of the employee benefits system. Too often, plan sponsors face expensive lawsuits no matter what reasonable course of action they take. These lawsuits can cost hundreds of thousands, even millions of dollars to defend, even if the claim ultimately is dismissed. Plan participants ultimately bear those costs. If EBSA is determined to provide information to

[4] https://www.oig.dol.gov/public/oaprojects/DOL%20Common%20Interest%20Agreements_Engagement%20Letter.pdf.

attorneys suing benefits plans, then surely it is reasonable that the scope of this cooperation should be documented and transparent.

If DOL determines it is going to share information or assistance with non-government entities, the *Balance the Scales Act* would require a written agreement documenting the nature and scope of that assistance. DOL would be required to provide a copy of it to employers or plan officials that could be affected. It seems like a basic tenet of fairness to know whether a federal agency is assisting a plan's litigation adversary.

The bill would also require an annual report to Congress describing these agreements and their scope while protecting identifying information. In keeping with the theme of transparency, this report would make clear the extent to which DOL officials are working with non-governmental actors. Absent this kind of transparency – including the use of a formal agreement that must be disclosed – neither Congress nor the benefits community will really understand how prevalent these practices are.

Finally, ERIC wholeheartedly endorses the "finding" in Section 3 of this bill, articulating that ERISA is designed to "promote, encourage, and facilitate the voluntary establishment and maintenance of, and contribution to" retirement plans. EBSA's activities should always be consistent with this framework.

- **ERIC supports longer-term reforms that emphasize benefits delivery instead of administrative burden and litigation risk.** Ultimately, clarity and simplification of the rules surrounding benefits plans will help both regulators and the regulated community. That may take many forms, including ERISA litigation reform, clarifying the pleading standards applicable to ERISA claims, ensuring ERISA preemption is protected, and streamlining notice and disclosure requirements, including by encouraging electronic delivery of both retirement and health and welfare plan notices. ERIC has a comprehensive policy agenda that can help encourage plan creation and maintenance, reduce administrative costs, and improve benefits.[5]

Conclusion

Large plan sponsors provide health and retirement benefits to tens of millions of their employees and their families. It's vital that these benefits are protected, and the Department of Labor plays a crucial role in helping plan sponsors comply with the complicated regime of laws and regulations governing those benefits. Enforcement and oversight are important components of securing those benefits, and policymakers should demand transparency and accountability from the regulatory agencies charged with administering those laws. We look forward to working with members of this Committee, other members of Congress, and the administration to improve the benefits landscape.

[5] ERIC's policy agenda is available at https://www.eric.org/wp-content/uploads/2025/03/2025-ERIC-Policy-Priorities-PDF-compressed-compressed.pdf.