STATEMENT OF THE ERISA INDUSTRY COMMITTEE

TO THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON EDUCATION AND WORKFORCE SUBCOMMITTEE ON WORKFORCE PROTECTIONS

HEARING ON

"BROKEN TRUST: HOW THE BIDEN-HARRIS DOL LEAKED CONFIDENTIAL INFORMATION"

Chairman Mackenzie, Ranking Member Omar, and Members of the Subcommittee:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to submit a statement for the record 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 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. 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. This vision of collaboration has been more prominent recently, as the Department has focused increasingly on compliance assistance rather than "gotcha" enforcement. [1]

In several recent hearings, the Committee on Education and Workforce has reviewed the challenges facing retirement plan sponsors, including EBSA's historic use of prolonged investigations and the ERISA class action epidemic. The past decade has seen an explosion in the number and types of lawsuits brought against plan sponsors. Too often, they are wholly without merit and are merely brought primarily to extract settlements. Ultimately, workers and 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 has provided information gathered in benefit plan investigations 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 via "common interest agreements" sharing confidential information.

On June 30, 2026, the Department of Labor's Office of the Inspector General released a report entitled "DOL Needs Stronger Oversight and Controls for Sharing Confidential Information."[2] The report came at the request of this Committee, and focused on the use and controls surrounding common interest agreements involving both EBSA and DOL's Wage and Hour Division. The report included several very troubling conclusions, including:

- *"…DOL did not establish sufficient controls for how it shared confidential information using common interest agreements with non-governmental entities. Specifically, SOL, EBSA, and WHD did not have formal policies and procedures, a framework for internal coordination, and tracking mechanisms."*
- *"[DOL subagencies] did not establish roles and responsibilities or have strategies for minimizing potential, actual, and apparent bias for government personnel working on agreements."*

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[1] *See, e.g.*, https://www.dol.gov/newsroom/releases/osec/osec20250602.
[2] https://www.oig.dol.gov/public/reports/oa/2026/09-26-001-08-001.pdf.

- *"…DOL may have improperly entered into common interest agreements with non-governmental entities and potentially disclosed privileged investigative information, providing an unfair advantage to those entities. These issues occurred because DOL management did not place sufficient emphasis on establishing roles and responsibilities necessary for effective oversight and did not provide adequate training to all responsible parties."*[3]

As a result of these deficiencies, the OIG issued several recommendations, including process improvements for transparency and coordination of these arrangements. The office of the Solicitor of Labor and EBSA agreed to abide by the recommendations. This comports with DOL's recent helpful statement that EBSA enforcement should not be coordinated with private-sector attorneys. In Field Assistance Bulletin 2026-1, EBSA Assistant Secretary Daniel Aronowitz wrote:

> *"… EBSA investigators and professionals will not do anything that compromises the Department's independence, integrity and credibility with the regulated or participant communities. This includes eliminating any appearance that EBSA enforcement activities and priorities are being coordinated with plaintiff lawyers pursuing private actions."*

ERIC appreciates these statements and improvements. However, this Committee has done even more to level the playing field. For example, ERIC strongly supports the *Balance the Scales Act*, H.R. 2958, which the Committee ordered favorably reported on September 17, 2025. This legislation would bring transparency to the use of these agreements for both Congress and plan sponsors. If EBSA at some time in the future is determined to provide information to 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

[3] *Id.*

maintenance of, and contribution to" retirement plans. EBSA's activities should always be consistent with this framework.

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. We encourage policymakers to seek 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.