Business Roundtable

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Representative Virginia Foxx
Chairwoman, Committee on Education and the Workforce
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

Re: Request for Information - ERISA's 50th Anniversary: Reforms to Increase Affordability and Quality in Employer-Sponsored Health Coverage

Dear Chairwoman Foxx,

On behalf of the CEO Members of Business Roundtable, we thank you for the opportunity to comment on the Request for Information (RFI) on *Reforms to Increase Affordability and Quality in Employer-Sponsored Health Coverage*.

Business Roundtable is an association of more than 200 CEOs of America's leading companies, representing every sector of the U.S. economy. Its members manage companies that support one in four American jobs and generate nearly one-quarter of U.S. GDP.

Employer-sponsored insurance (ESI) is the backbone of the American health care system, with nearly 153 million nonelderly people, or almost 50 percent of covered Americans, obtaining health care coverage through their employer.[1] ESI works because the Employee Retirement Income Security Act (ERISA) expressly preempts all state laws that "relate" to employee benefit plans,[2] providing employers with the flexibility to offer affordable and comprehensive benefits nationwide, while still empowering employees and their families to tailor benefits to best meet their needs. Surveys show that employees are extremely happy with the current ESI approach[3]:

- 93% of adults who receive health insurance through their own or their spouse's employer are satisfied with their plan.
- 89% of employees say that they prefer to get their insurance through their employer rather than through other means.
- 87% of adults say their employer-sponsored health insurance is affordable.

[1] KFF, 2023 Employer Health Benefits Survey (October 18, 2023).
[2] *See* ERISA § 514(a)
[3] New Poll of American Workers Reveals Tremendous Value Placed on Workplace Health Benefits | U.S. Chamber of Commerce (uschamber.com)

In addition, employers who sponsor health insurance are engines of innovation in health care, spearheading new ways to deliver quality, affordable health care in the most cost-efficient way. There is no better example of the innovative flexibility ESI allows than the ability of companies to proactively respond and improve health coverage for their employees during the COVID-19 pandemic. According to a KFF study, nearly 65 percent of large employers made changes to their telemedicine benefits and another 40 percent made changes to their mental health benefits to meet the needs of their employees during the pandemic.[4] Employers were able to quickly and successfully adapt because the current federal framework under ERISA emphasizes flexibility in nationwide benefit design, rather than restrictive mandates or a state-by-state patchwork approach.

With the 50th anniversary of ERISA approaching, we appreciate the Committee's efforts to identify opportunities to strengthen ERISA and safeguard the ability of employers to provide comprehensive and affordable coverage to their employees. As you consider changes to current law, Business Roundtable urges the Committee to consider the following principles:

- **Support and Strengthen ERISA Preemption.** Current ERISA preemption must be maintained to protect employers' ability to provide uniform health benefits to employees and their dependents across the nation. ERISA preemption of state employer mandates and other types of state restrictions on plan design options allows employer plan sponsors to best meet the needs of their nationwide employees and retirees, while providing predictability in benefits administration.

  ERISA preemption was no accident — it represents a conscious policy choice by Congress. In fact, at the time of its passing, Congressman John Dent (D-PA) described preemption as "the crowning achievement of [ERISA], the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation."[5]

  In recent years, states have tried to undermine ERISA by passing new mandates and plan design restrictions that indirectly apply to self-insured employers. These new requirements create a patchwork of benefit laws that increase complexity and costs, undermining the ability of employers to drive cost savings from the economies of scale that come from ERISA preemption of state laws. In addition, it creates inequity in the benefits that self-insured employers can generously offer to their entire full-time workforce. The federal restriction on state-by-state regulation of self-insured employers should not be weakened in any way. We encourage the Committee to further strengthen ERISA preemption by clarifying that state mandates and plan design restrictions cannot apply directly to health plans provided by self-insured employers or

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[4] KFF, 2021 Employer Health Benefits Survey (November 10, 2021).
[5] 120 Cong. Rec. 29,197 (1974)

indirectly by targeting third party administrators, administrative service organizations, or other health benefits providers in the self-insured marketplace.

- **Provide Flexibility.** Innovation in health care is successful when the private sector can experiment and lead. Unlike the relatively slow process of pushing change through regulation, employers have demonstrated the capacity to rapidly innovate in their plan designs, in selecting providers and in adopting new technologies. Technology and new approaches to care are giving employers greater control over their health care investments than ever before. Employers now have a host of new solutions available to them, from delivering care digitally to using analytics to drive better care for their employees. Employers should be given the opportunity to figure out what works and what doesn't instead of the government deciding what innovations are best. The continuation of a flexible, market-based federal framework that does not include mandated benefits or price controls helps employers innovate and keep employees' health coverage affordable by allowing employers to take advantage of economies of scale and develop best practices.

- **Increase Transparency.** Employers are leaders in seeking better cost and quality information for their employees to help ensure access to the right care. Many employers continue to face hurdles in accessing meaningful data to make benefit design decisions that empower their employees to seek high-quality, low-cost services. The Committee should ensure that self-insured employers receive access to the deidentified health care claims data tied to their sponsored plan to drive greater innovation and value for employees.

- **Affordability and Sustainability.** Despite all the successes in providing employees access to affordable, comprehensive health coverage, the long-term trajectory of health care costs in the United States is unsustainable. More than 90 percent of metropolitan statistical areas have provider markets that are either highly concentrated or super concentrated, leading to monopolistic provider power[6]. As provider market power has increased through consolidation, employers have seen their ability to negotiate lower prices and maintain robust provider networks decrease.

  To maintain comprehensive, affordable health benefits that don't adversely impact worker wages, employers have taken on an increasing amount of financial burden, covering more than 83 percent of the cost of premiums for single coverage and more than 72 percent of the cost of premiums for family coverage in 2023.[7] In response to concerns about affordability, policymakers have sometimes pursued greater use of price controls in Medicare and Medicaid, resulting in cost-shifting in the commercial market

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[6] Market Concentration Variation of Health Care Providers and Health Insurers in the United States | Commonwealth Fund

[7] Section 6: Worker and Employer Contributions for Premiums - 10240 | KFF

> that further exacerbates the problem of increasing commercial provider prices. We encourage the Committee to work with employers to level the playing field by tackling provider monopolies, empowering self-insured employers to negotiate prices together, and restoring free market forces and competition in the commercial marketplace.

We thank the Committee for its leadership in protecting and strengthening ERISA and its collaborative approach to policymaking. Business Roundtable stands ready to work with members of the Education and the Workforce Committee to modernize ERISA to strengthen ERISA preemption, enhance flexibility, increase transparency, and improve affordability and sustainability.

Sincerely,

Corey Astill
Vice President, Health and Retirement Committee
Business Roundtable