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

JAMES GELFAND
President

February 8, 2023

Members of the Senate Committee on the Judiciary,

On behalf of The ERISA Industry Committee (ERIC), we urge you to **vote YES on legislation that will be considered in the Committee** regarding transparency and competition in the prescription drug market, including legislation that would direct coordination between the relevant regulatory agencies, and prohibit practices that discourage competition and affordability within the prescription drug market.

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.

The Committee on the Judiciary deserves praise for working in a bipartisan fashion on addressing some of the current problems in the prescription drug market that are a result of departures from the "rules of the road" established by the 1984 D*rug Price Competition and Patent Term Restoration Act* (Public Law 98-417), usually referred to as the *Hatch Waxman Act*. The law laid out a compromise wherein innovator companies are rewarded with market monopolies, for a limited duration of time, and then must face competition from generic products. Various strategies are now used to delay or escape entirely from that competition, and the result has been unconscionable prices and costs to patients and the employers who sponsor health plans for more than 155 million Americans. ERIC supports policies to increase competition and address market failures, and has a comprehensive agenda to lower drug costs through transparency and competition. These bills align with facets of this agenda. Specifically, **ERIC supports the following bills:**

Interagency Patent Coordination and Improvement Act of 2023

- **S. 79** establishes an interagency task force between the United States Patent and Trademark Office and the Food and Drug Administration for purposes of sharing information and providing technical assistance with respect to patents for drugs and biological products.

Preserve Access to Affordable Generics and Biosimilars Act

- **S. 142** prohibits brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market, also known as "pay for delay."

Stop STALLING Act

- **S. 148** enables the Federal Trade Commission (FTC) to deter filing of sham citizen petitions to cover an attempt to interfere with approval of a competing generic drug or biosimilar.

Affordable Prescriptions for Patients Act of 2023

- **S. 150** would end so-called "patent thickets" and "patent evergreening" by enforcing the tenets of Hatch Waxman that provided a time-limited market exclusivity for branded prescription drugs, before allowing market competition from generic and biosimilar alternatives.

ERIC does not have a position on the *Prescription Pricing for the People Act of 2023* **(S. 113)**, which requires the Federal Trade Commission (FTC) to study the role of intermediaries in the pharmaceutical supply chain and provide Congress with appropriate policy recommendations, as the FTC is already conducting a study on the activities of pharmacy benefit managers, and the study called for in the bill appears to be smaller in scope and less comprehensive than the study the FTC is currently working on.

We appreciate the work that has been done on these bills and look forward to working with the Committee to advance these critical pieces of legislation. **As such, ERIC urges Committee members to vote YES, and support the passage of S. 79, S. 142, S. 148, and S. 150, to increase competition and affordability within the prescription drug market**.

Sincerely,

James P. Gelfand
President