



March 5, 2018

*Submitted via Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov)*

Attention: Definition of Employer – Small Business Health Plans RIN 1210-AB85  
Office of Regulations and Interpretations, Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: Proposed Regulation: Definition of “Employer” under Section 3(5) of ERISA**

To Whom It May Concern,

On behalf of Minnesota’s credit unions, please accept this correspondence in response to the Department of Labor’s (the “Department”) request for comments concerning the proposed regulation regarding Association Health Plans (AHP). The Minnesota Credit Union Network (MnCUN) represents the interests of Minnesota’s 113 credit unions and their more than 1.7 million members. MnCUN thanks you for the opportunity to provide feedback on this matter.

As expressed in your overview of the proposed regulation, AHPs are extremely beneficial to smaller employers, who typically do not possess the resources, scale and bargaining power to obtain adequate and affordable health insurance for their employees. This is of particular importance to credit unions in the United States, as nearly 50 percent of them have five or fewer full-time employees. Therefore, we fervently support the purpose of the proposed regulation and the Department’s efforts to reduce regulations that hinder the creation and sustainability of AHPs. We do ask that the Department strongly consider the following recommendations.

**Nondiscrimination Provision**

The nondiscrimination provisions in subsection (d)(4) should be removed, because these provisions will undermine the stated purpose of the proposed rule, which is “to expand employer and employee access to more affordable, high-quality coverage.”

Subsection (d)(4) states, “In applying the nondiscrimination provisions of paragraphs (d)(2) and (3) of this section, the group or association may not treat different employer members of the group or association as distinct groups of similarly-situated individuals.” The Department states, that one of the



reasons for the nondiscrimination provision is to “prevent potential adverse impacts on the individual and small group markets.” (Proposed Regulation, p. 8.) However, the proposed nondiscrimination provision is very likely to actually increase, not prevent, the potential adverse impacts. Here is why.

An AHP’s success is based upon its ability to create volume through attracting and retaining various employer groups to participate. This volume reduces the overall administrative costs for all participants. To create this volume, it’s imperative that an AHP is able to attract larger employer groups as well as low-risk employer groups. To be able to attract these two groups, the AHP must offer the ability for groups to be risk-rated individually. If AHPs are not allowed to do so, they will lose (or not be able to attract) the larger employer groups or the lower risk groups, who frankly have more options available to them to obtain affordable coverage. This will result in adverse selection; reducing the AHP’s volume. The result will be either increased costs for the employer groups that remain, or in many cases, what is known as the “death spiral”, which will put an end to the AHP in its entirety. Smaller employers and higher risk employer groups will end up right where they are now, with few if any affordable options to provide healthcare for their employees. Therefore, we respectfully request that you remove or revise the nondiscrimination provision so that AHP’s may appropriately risk-rate individual employer groups.

#### State Law Exemption

The Department also asked for input regarding the possibility of an exemption from state regulations under ERISA section 514(b)(6)(B). Some states (e.g. Minnesota) have very restrictive laws and regulations, which make the creation and operation of AHPs overly difficult and burdensome. The purpose of the proposed rule will be undermined in states like Minnesota unless appropriate exemptions are put in place. Therefore, we encourage the Department to enact exemptions that would allow AHPs to thrive in all states.

We applaud and support the Department’s efforts to expand employee and employer access to affordable and high-quality health insurance plans. Thank you for taking into consideration MnCUN’s comments on this matter.

If you have any questions about our comments, please do not hesitate to contact us at 651-288-5170.

Sincerely,

A handwritten signature in blue ink that reads "Mark D. Cummins". The signature is fluid and cursive.

Mark D. Cummins  
President & CEO  
Minnesota Credit Union Network