



**MICHIGAN
CHAMBER**
of Commerce

600 South Walnut Street | Lansing, Michigan 48933-2200
michamber.com | 800-748-0266 toll-free

February 13, 2018

U.S. Department of Labor
200 Constitution Avenue NW
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
Washington, DC 20210

Attention: Definition of Employer—Small Business Health Plans RIN 1210-AB85

To Whom It May Concern:

Thank you for the opportunity to comment on U.S. Department of Labor's (DOL) proposed regulation ("Proposed Rule" - RIN 1210-AB85) under Title I of the Employee Retirement Income Security Act (ERISA) that would broaden the criteria under ERISA section 3(5) for determining when employers may join together to form Association Health Plans (AHP).

On behalf of the Michigan Chamber of Commerce, which represents more than 6,400 businesses of nearly every size and type across all 83 counties of Michigan, we are writing to **support the Proposed Rule with one change.**

Specifically, we have concerns regarding the expanded definition of "commonality of interests" pursuant to ERISA section 3(5). As it pertains to associations "created solely for the purposes of providing group health coverage", we feel ERISA section 3(5) should not be changed and that only bona fide associations should be able to sponsor AHPs. Though we understand the DOL's motivation to extend the definition such that employers in areas not represented by adequate bona fide associations might have the opportunity to bind together and form their own, we feel strongly that the potential negative outcomes of this scenario far outweigh any potential benefits.

Firstly, we feel that there is almost certainly adequate bona fide association across most of the nation, and certainly within the state of Michigan. Thus, the percentage of the population that might exist in absence of bona fide associations, that might benefit from such a definition change, is almost certainly a small minority, if any. Conversely, the number of businesses and bona fide associations that might experience a negative consequence to this change in definition could nearly be ubiquitous. In this regard, the risk clearly outweighs the potential reward.

Secondly, we feel that allowing for the creation of artificial associations would unduly segment, and possibly fracture, a region into a multitude of smaller AHP's, compromising each AHP's ability to enroll the critical masses needed to leverage the Law of Large



**MICHIGAN
CHAMBER**

of Commerce

600 South Walnut Street | Lansing, Michigan 48933-2200
michamber.com | 800-748-0266 toll-free

Numbers, essential for the viability and long-term sustainability of any pooled-risk insurance endeavor, as well as various other economies of scale, such as a larger AHPs ability to better leverage its membership to negotiate provider discounts, etc. Though we feel there should be a healthy number of AHP's in any given marketplace to drive competition, we feel strongly that there are ample bona fide trade associations, as well as local, regional and state chambers of commerce to foster a competitive marketplace.

Lastly, historically, Multiple Employer Welfare Arrangements (MEWAs) under ERISA have had a bad reputation of financial mismanagement often leading to financial instability and ultimate insolvency. At least in Michigan, this market risk poses unnecessary challenges to any bona fide association considering entering the AHP space. We feel it is critical that AHPs be sponsored only by reputable, bona fide associations, such as chambers of commerce, to foster the sense of trustworthiness and validity of AHPs as a safe, reliability, cost-effective alternative for employers. It is our position that allowing AHPs to be sponsored by Artificial Associations furthers the potential for less qualified, less scrupulous entities to enter the AHP space, potentially resulting in the creation of unsustainable AHPs, further harm to the perception of MEWAs/AHPs, all stymieing the AHP industry's ability to bring health care savings to millions of small businesses.

The Proposed Rule creates a real and unique health care cost-containment opportunity for sole proprietors and small employers alike. However, for the reasons stated above, we believe only bona fide associations should be able to sponsor AHPs and would urge you to reconsider this language in the Proposed Rule.

Thank you again for the opportunity to comment. Please do not hesitate to contact me with any questions at (517) 371-7678 or wblock@michamber.com.

Sincerely,

Wendy Block

Senior Director of Health Policy, Human Resources & Business Advocacy
Michigan Chamber of Commerce