



February 28, 2018

**VIA ELECTRONIC DELIVERY**

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

Attn: Definition of Employer—Small Business Health Plans RIN – 1210 – AB85

Dear Ladies and Gentlemen:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 230 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to submit comments on the Department of Labor's (DOL's) proposed regulation on Association Health Plans (AHPs) under Title I of the Employee Retirement Income Security Act (ERISA). We generally support the purpose and goals of the proposal as described below, and appreciate the opportunity to provide comments.

The DOL's proposal would broaden the criteria under ERISA section 3(5) for determining when employers may join together in an employer group or association that is treated as the "employer" sponsor of a single multiple-employer "employee welfare benefit plan" and "group health plan" as those terms are defined in Title I of ERISA. By treating the association itself as the employer sponsor of a single plan, the regulation is intended to facilitate the adoption and administration of such arrangements. The regulation would modify the definition of "employer," in part, by creating a more flexible "commonality of interest" test for the employer members than had adopted in sub-regulatory interpretive rulings under ERISA section 3(5). At the same time, the regulation would continue to distinguish employment based plans, the focal point of Title I of ERISA, from mere commercial insurance programs and administrative service arrangements marketed to employers. For purposes of Title I of ERISA, the proposal would also permit working owners of an incorporated or unincorporated trade or business, including partners in a partnership, to elect to act as employers for purposes of participating in an employer group or association sponsoring a health plan and also to be treated as employees with respect to a trade, business or partnership for purposes of being covered by the employer group's or association's health plan. The DOL states that the goal of the rulemaking is to expand access to affordable health coverage, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA. The proposed regulation would affect such association health plans, health coverage under these health plans, groups and associations of employers sponsoring such plans, participants and beneficiaries with health coverage under these plans, health insurance issuers, and purchasers of health insurance not purchased through association health plans.

WBA supports AHPs, but believes additional oversight is warranted for AHPs that do not have a membership connection to an existing association. Nearly every industry you can think of currently has an association that serves its members. Existing associations, such as WBA, have a long history of serving their members by offering a variety of products and services ranging from government relations activities to educational programs to other products and services like insurance coverage for health, life, and industry-specific products. In short, the primary mission of existing associations with a membership connection typically is to serve and meet the needs of their members, rather than making a profit. We are very concerned that new associations, absent the scepter of DOL's watchful eye, will literally pop-up overnight for the sole purpose of making a profit by implementing thinly-capitalized plans, while disregarding the stated purpose of the proposal—to expand access of small businesses to affordable, high-quality, well-capitalized health care plans. Without a membership connection, these AHPs will not have the same level of “skin in the game” or “checks and balances” existing associations possess to ensure the needs of the participants are being met in an appropriate and fiscally responsible manner. To deter the creation of AHPs whose sole or primary purpose is to profit from newly formed healthcare plans, WBA suggests DOL implement a determination letter program or some other mechanism that would permit the Department to review individual plans to ensure sufficient protections are in place for plan participants for new AHPs that do not have a clear membership nexus.

Once again, WBA appreciates the opportunity to comment on this important proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rose Oswald Poels".

Rose Oswald Poels  
President/CEO