



February 9, 2018

The Honorable R. Alexander Acosta  
Secretary of Labor  
C/O: Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
US Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210  
ATTN: Definition of Employer – Small Business Health Plans  
RIN: 1210-AB85

Dear Mr. Secretary:

RE: Comments in Response to Notice of Proposed Rulemaking, “Definition of ‘Employer’ under Section 3(5) of ERISA – Association Health Plans”, RIN 1210-AB85 Fed Reg. 614 (January 5, 2018)

The North Dakota Banks Benefit Trust (NDBBT) is an IRC Section 501(c)(9) trust established MEWA (Multiple Employer Welfare Arrangement) operating as an ERISA “Employee Welfare Benefit Plan” (EWBP). NDBBT was formed by the two banking associations existing in North Dakota, the Independent Community Banks of North Dakota (ICBND) and the North Dakota Bankers Association (NDBA). The purpose of forming the NDBBT was to provide group health coverage options for all member banks and their employees better than coverage options available to the member banks individually, primarily due to the smaller size of member banks.

NDBBT applauds and supports efforts to expand access to group health insurance to small businesses across the nation. However, certain provisions in the proposed rules, if not adjusted, may serve to actually constrict coverage available to small businesses such as our current member banks.

The provision in these proposed rules (Prop. Reg. 2510.3-5(d)(4)) that indicate AHPs will be subject to expanded nondiscrimination rules that ban all group health plans from conditioning premiums for participating employer groups on health status would, over time, almost certainly

create what is commonly called a “death spiral”. If there is no adjustment for claims experience of a member firm (not an individual), the healthier and younger employer groups above 50 lives within the AHP will be solicited by competing insurance companies, and, receiving lower premium offers, will drop out of the AHP, leaving less healthy and smaller employers with higher premiums. This cycle will repeat, year after year, until the AHP expires.

The administration’s overall objective with this proposed regulation was introduced to be one of reducing regulatory restrictions on Association Health Plans, as well as being supportive of an expanded role for AHPs in the health insurance marketplace. Many of the provisions of the proposed regulations would be advantageous to AHPs. The proposed regulation also asked for comments to whether this proposed expansion of existing non-discrimination rules “... would create involuntary cross-subsidization across firms that would discourage formation and use of AHPs.” We believe that retention of this particular provision in the regulation would discourage formation of new AHPs and if applied to existing successful AHPs like ours, could jeopardize their reserves and trigger rapid withdrawals by lower risk employers. Some of the successful AHPs in our region have operated to the benefit of small business employers for 3 decades or more without community rating as proposed. This one very detrimental provision needs to be removed in order to accomplish the overall positive objective of these proposed regulations.

This provision would function as a new regulatory restraint for AHPs and needs to be eliminated. It contradicts the Administrative objective of reducing regulatory restraints and increasing healthcare options in the marketplace. Its impact would be to eliminate the way AHPs have been permitted to risk-rate groups within their plans for many years. The small business health plan known as “SHOP” of the Affordable Care Act (“ACA”) has not provided the relief to small business employers as promised. AHPs have provided premium relief to thousands of small business employers nationwide.

The successful track records of AHPs have, in large part, been based on combining volume to reduce overall administrative costs per participant, while risk-rating individual groups within AHPs based on health claim experience and other factors. This negative provision would pose a new regulatory constraint by no longer allowing AHPs to rate based on individual group’s claims experience. Rating by employer is clearly allowed as a “similarly situated group” under current law. This should be continued. If AHPs cannot rate individual groups based on claim experience, groups with more favorable experience will leave and adverse selection will cause a “death spiral” scenario to be probable.

If some form of the non-discrimination rule is adopted for newly formed AHPs, existing AHPs should be “grandfathered”. Plans that are meeting existing law as bona fide association plans under ERISA and are providing coverage to their member employers and their employees in a successful manner should not be disrupted. To do so, may well further disrupt the small group and individual markets.

We thank you for your consideration.

ND BANKS BENEFIT TRUST



Todd Heilman, Chairman  
Western State Bank, Devils Lake, ND

The Chairman signing on behalf of all Trustees and Non-voting Ex-Officio Directors:

Pam Binder, Vice Chairman	BNC National Bank, Bismarck, ND
Sarah Getzlaff, Treasurer	Security First Bank of North Dakota, Mandan, ND
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