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

The Lubbock Chamber of Commerce represents more than 1,900 businesses and over 79,000 employees on the South Plains which accounts for over \$2 billion in annual household earnings in Lubbock and West Texas. Since 1913 the Chamber, as a catalyst for business growth; a convener of leaders and influencers; and a champion for a stronger community, has served as a unified voice of business by actively advocating for a pro-jobs, pro-growth, pro-business climate.

In several surveys and conversations with small businesses culminating in 2006, businesses made clear to the Lubbock Chamber that their top concern and worry was the ability to offer health care to employees. In February 2018 just before drafting and submitting this comment, we again polled our members about their top concern. A full twelve years later, the top concern has not changed and remains having the ability to offer health care to employees. As such, we commend the U.S. Department of Labor's efforts to expand the ability for small businesses to take advantage of Association Health Plans (AHPs).

After hearing health care was a top concern in the early 2000s, the Lubbock Chamber of Commerce in 2006 began offering affordable and flexible health insurance coverage to its members through a cooperative-based pool. However, even with the awareness that members were concerned about health care, we were astounded by the pent-up demand for an option that was similar to what could be made possible by the Proposed Rule. In the mere first thirty days of enrollment in 2006, almost 300 employers encompassing 3,500 lives became enrolled in the Lubbock Chamber Employer Health Plan. For perspective, the population of Lubbock County is just less than 300,000. After the plan was established, enrollment peaked at roughly 1,000 businesses and 10,000 lives, comprised of owners, employees and dependents of mostly small businesses.

These plans were offered under state-regulated purchasing cooperatives (one for large group and one for small group.) Unfortunately, the limitations and requirements of the Patient Protection and Affordable Care Act (PPACA) have removed the flexibility we were able to employ in working with our insurance partner to design plans based on local market needs and preferences. This has dramatically eroded affordability for our members as well.

Small businesses, their employees and organizations such as the Lubbock Chamber that work in their best interest have long awaited some form of flexibility and relief from the burdens of PPACA. We fervently hope the Final Rule will again allow for small businesses to benefit from



having access to more affordable, flexible options. However, the Lubbock Chamber does have certain concerns about the Proposed Rule, and we appreciate the opportunity to communicate those concerns.

Clarity Regarding Preemption: Prior to 2014, the Lubbock Chamber Employer Health Plan operated successfully under state regulation through a private purchase cooperative subsidiary operating under the Lubbock Chamber of Commerce. We support state regulation for AHPs or plans similar to them. Upon reading the proposed rule, however, it is unclear whether a state's attempt to regulate AHPs in a way that exceeds the standards in the rule would be preempted under the Employee Retirement Income Security Act (ERISA) or not. While it is somewhat clear that states would retain the ability to regulate solvency and other financial or licensure requirements for AHPs, states could be limited in their ability to adopt other regulatory standards. The proposed rule seems unclear about what states can and cannot do to regulate AHPs.

Association Requirements: While we support the proposed rule widening the eligibility of types of small businesses that can pool together to include “geography” as a criterion, the proposed rule is absent additional restrictions that we believe would be helpful in protecting small businesses by ensuring that AHPs be offered by legitimate membership organizations. This would reduce the incidence of bad actors and abuses. Existing membership organizations such as chambers of commerce and established associations are less likely to risk their reputation and good will with members by engaging in fraud or abuse. We recommend adding the following criteria for organizations before they may be eligible to operate an AHP:

- Established 501(c)(6) or 501(c)(3) federal tax exempt status
- Average revenue or expenses of at least \$1 million annually over the last 5 years, not related to those associated with premiums or reimbursement activity within the AHP
- Substantial activities or programs other than the AHP

Sole Proprietor Anti-Marriage Policy: When the Lubbock Chamber launched our Employer Health Plan in 2006, many working sole proprietor/sole operator businesses, such as CPAs, Farmers, Consultants, Attorneys and Realtors sought to join our plan but were ineligible due to not meeting the minimum-2-employee-size small group requirement. The proposed rule addresses this issue by allowing sole proprietors to join AHPs. However, we are concerned that the proposed rule forces such a sole proprietor to give up coverage under an AHP if that person marries a spouse who has subsidized group health coverage through the spouse's place of employment. We hope the Final Rule eliminates this forced surrender of coverage.

Employer-based Associations: The Chamber has reviewed a number of other comments that have been submitted. Due to our support of the employer-sponsored health insurance system, we believe the definition of an “association” in the rule should be limited to those organizations that have employers as members. We have reviewed one other comment advocating for allowing employee-members of organizations to join an AHP independently of their employer. We do not believe this is in the best interest of small group, employer-based insurance as it could result in a fragmented market and potential adverse selection for employer-based AHPs.



In closing, the mission of the Lubbock Chamber is to “strengthen, promote and serve the business community.” We believe the basic framework of the Proposed Rule complements that mission. We look forward to promulgation of the Final Rule.

Thank you for the opportunity to submit comment on this very important issue.

Eddie McBride
President and CEO

