



March 6, 2018

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

Re: *Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans* [RIN 1210-AB85]

The American Institute of CPAs (AICPA) is the world’s largest professional organization representing the accounting profession, with more than 418,000 members, and a history of serving the public interest since 1887. The AICPA represents the CPA profession nationally regarding rule-making and standard-setting, and serves as an advocate before legislative bodies, public interest groups and other professional organizations.

We have reviewed the Proposed Rule, *Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans* and we are providing the following comments for your consideration.

GENERAL COMMENTS

We applaud the Department’s efforts to expand access to affordable health coverage by allowing associations to provide health insurance to its members through Association Health Plans (AHPs). Given the AICPA’s nationwide reach and representation of CPAs and their businesses, we are uniquely positioned to offer health benefits to our members and their employees, which will allow them to spend their limited time and resources running and growing their businesses.

We agree that by treating the association as an employer sponsor of a single plan, it would facilitate the adoption and administration of such arrangements. However, we would like to provide comments on ways to strengthen the proposed rule to ensure conformity with the letter and spirit of the Departments’ efforts.

SPECIFIC COMMENTS

Issue 1: Clarify the definition of “association of employer members.”

The proposed rule assumes a literal meaning of “association of employer members”- an association that is only comprised of employers- and by default would exclude professional member organizations like the AICPA. A narrow interpretation of the phrase would significantly limit the number of associations that are able to form AHPs, undermining the

goal of the Department's efforts to expand access to affordable health coverage for small employers and self-employed individuals.

There are many associations that are organized in a variety of forms. Some are organized as employer member organizations and others are organized like the AICPA- as individual members of a profession. Some of the members in professional organizations are employees of firms of varying sizes that may or may not offer health benefits. However, a majority of members are sole proprietors or owners and partners of small and medium-sized firms, essentially operating in a dual capacity- as an individual member and as an employer member.

While the proposed rule rightly classifies sole proprietors and other working owners of a trade or business as employers and employees for purposes of being covered by an association's health plan, allowing a narrow definition of "association of employer members" would otherwise limit qualifying associations' ability to offer AHPs to the newly expanded population contemplated under the proposed rule. It seems counterintuitive and against the stated goal of the Department to lock out associations that meet all the criteria in substance but fails because of the way it is organized.

The proposed regulation should be clarified to explicitly allow employers of association members to join the AHP offered by an association or allow non-profit membership organizations, including professional associations, to offer AHPs if all other criteria are met. This could be accomplished by adding a subparagraph under the newly proposed Section 2510.3-5(b) stating "*The group or association is comprised, in all or part, of employer members.*"

Issue 2: Limit state-by-state regulation of national AHPs

The proposed rule is silent on the preemption of state law, which suggest that AHPs will be subject to the same regulatory scheme as multiple employer welfare arrangements (MEWAs).

Under ERISA section 514(b)(6), if a MEWA is self-insured, it is subject to any state insurance law that is not inconsistent with ERISA, including benefit levels, solvency, and ratings. If a MEWA is fully-insured, state regulation is limited to contribution and reserve levels and the laws that enforce compliance with those standards. If state law is not preempted, AHPs, specifically those sponsored by national associations with members in every state, could be subject to a patchwork of 51 state laws, including the District of Columbia, which would make it difficult to administer a plan on a national basis and undermine the purpose and advantage of forming or joining an AHP.

Given prior abuses by MEWAs, we recognize the policy goal of allowing states to regulate insurance products offered within its borders. However, it would be difficult for AHPs to offer insurance across state lines that is both affordable and accessible for its members because they would not be able to achieve the economies of scale or bargaining power to

make it a worthwhile endeavor. To allow states to maintain regulatory authority and create the environment necessary for AHPs to thrive, the regulations should create an option that allows AHPs with participants in multiple states to be subject to the state laws and mandates where the association is situated.

Generally, employers that operate in multiple states can offer a single plan to all of its employees and be regulated by one state or comply with multiple state laws by offering separate plans in each state where they are located. As a result, employers can make the decision based on what is in the best interest of the business and its employees. AHPs that are “acting directly as an employer or indirectly in the interest of an employer” should have the same choice.

We support the Department’s efforts and favor actions that provide more options and better solutions for our members. We appreciate the opportunity to present these comments on behalf of PCPS member firms and would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Koziel". The signature is fluid and cursive, with a large initial "M" and "K".

Mark J. Koziel, CPA, CGMA
Executive Vice President- Public Accounting