

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

Re: Small Business Health Plans, RIN 1210-AB85

Ladies and Gentlemen,

The Transamerica companies are pleased to comment on the Department of Labor Proposed Rule on the Definition of “Employer” Under Section 3(5) of ERISA – Association Health Plans.

Transamerica markets life insurance, supplemental insurance plans, annuities, and retirement plans, as well as mutual funds and related investment products. Transamerica products and services are designed to help Americans protect against financial risk and build financial security. In 2016, Transamerica paid \$6.9 Billion in benefits to its policyholders. Transamerica markets its products in both the small and large employer markets, and individual market.

Transamerica believes that expansion of Association Health Plans will allow employers to more easily join together. The result will be reduction of administrative costs through economies of scale, strengthening of their bargaining position to obtain more favorable deals, and the ability to offer a wider array of insurance options.

To allow for maximum flexibility, we do not support a commonality requirement generally. It is our position that neither ERISA nor the Internal Revenue Code require commonality. ERISA section 3(5) defines “employer” as any person acting directly or indirectly in the interest of the employer. It goes on to mention that it may consist of a group or association, but is in no way limited to this. In addition, the provision itself contains no mention of “commonality” or “nexus.” Therefore, we would support a rule that clarified no commonality was required under section 3(5). Should the Department disagree, our comments on the proposed rule are set forth below.

#### Proposed Commonality Requirement

As the current American workplace is not bound by geography, we favor expansion to allow for multi-state associations and expansion to allow for state and Metropolitan Statistical Area (MSA) Combinations. For example, the Washington Metropolitan Area extends into Maryland and Virginia.

We support defining metropolitan areas by a standard benchmark that can be indexed to changes in the underlying benchmark. While, we prefer a federal designation supported by the U.S. Census or OMB, other federal sources would be acceptable. A federal definition can provide consistency. We also support a

grandfathering provision whereby to the extent any metropolitan areas change, the employers under any Association Health Plan (AHP) would be grandfathered under the metropolitan area applicable at the time. New employer participation under the AHP could be limited to the new metropolitan area.

We do not believe there will be geographic manipulation to avoid adverse risk. Based on the current geographic rules, it seems unlikely that the associations would manipulate the geographic classifications to avoid offering coverage to specific employers. It is more likely these associations will form based on the current business and economic development patterns, practices and relationships in the particular area/business region. The current interaction of these employers in market will likely initiate the geographic scope of the group/association.

It would be helpful for the Department to clarify if a group/association based on employer type could restrict geography and still qualify under the commonality of interest determination, provided they meet the geography requirements. Could a trade association offer coverage to specific geographic areas and not to all of its members (as long as it is not for discriminatory reasons)? Could an association represent a trade in distinct regions (state, MSA, county, city, etc.) versus state-wide or nationally? Interests within a trade, industry, line of business or profession can vary across the country, so allowing geography as an element seems reasonable in a commonality of interest determination. Further, existing employer based groups/associations were formed for purposes other than providing insurance. This allowance would ensure that existing and new employer based groups could offer association health plans without significant re-structuring of their organizations and/or geographic scope.

#### Rate Flexibility and Non-Discrimination

We believe it is advisable to provide association health plans (self-funded and fully insured) some level of rate flexibility to adjust rate structure as the group/association evolves. We do not object to a requirement that the adjustments be actuarially justified, reasonable and not specifically directed at a specific group or individual. It is important to allow for flexibility because the changes could be needed based on the specific demographic growth patterns and the actual claim experience of the underlying membership.

#### Impact on Existing Groups/MEWA's

We are in favor of providing a grace period for current groups to comply.

#### Impact on ACA Markets

The current state of the ACA exchanges appears to be unsustainable. There is little evidence that we have achieved or will achieve significant improvement under current conditions. A new option may produce a better overall result. At the very least, it is a new opportunity for generally underserved markets. The rules associated with this proposal provide a reasonable likelihood of large, stable risk pools in the association health plan market, while minimizing adverse selection and limiting risk to existing markets.

#### General Comments

The proposed rule includes both employees and former employees, which we support. These references are inconsistent throughout the commentary and proposed rule. It is important that the application to



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“employees and former employees” is preserved. We similarly support including clarifying references for “retirees” for former employees, “member or former member” and similar language for other employer type groups (for example, unions and VEBA’s) to ensure the rule is not narrowly construed.

We support publishing examples of acceptable group types that include such structures as Unions and VEBA’s.

Conclusion

Transamerica generally supports this effort to provide more flexibility to employers in providing benefits to their employees and retirees. We appreciate your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stanley", followed by a vertical blue line.

John Stanley  
Vice President and Managing Director Employee Benefits  
Transamerica Life Insurance Company  
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