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March 6, 2018

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**

To Whom It May Concern:

I am writing as a self-employed individual who must rely upon the individual health insurance market outside of the Exchange market. I only have one choice for coverage from a health insurance company. This company increased my monthly premium from \$2,369 per month in 2017, to \$3,630 per month in 2018; and raised my deductible from \$4,000 in 2017, to \$7,000 in 2018.

The proposed rule would offer the hope of possible choice and relief from the predatory practices of this health insurance company. As it stands, I must pay \$43,560 this year to a health insurance company that will not pay a benefit until after a \$7,000 deductible is paid on top of this premium. So my out-of-pocket cost is \$50,560, for absolutely no health insurance benefit for a relatively healthy family of 3 people.

I have no employees and so I am among the “working owners” that could participate in this multiple employer group health plan arrangement. The term “employer” at ERISA section 3(5) is defined as “any person” acting as an employer. There is no requirement in the statute to separately have additional “employees”. Being undefined in the statute, the plain meaning of the term self-employed is to act as an “employer” of yourself.

Some have commented that the self-employed should be prohibited from participating in a multiple employer group health plan. This view confines the unsubsidized self-employed to the outrageous premiums and deductibles imposed by health insurance companies. This is not health insurance that is offered in the market outside of Exchanges but is simply an act of piracy that Exchange protectors choose to ignore.

Because this proposed rule relies only upon the statutory phrase “employer” at ERISA 3(5) there are few other requirements that can be imposed as conditions to be an association health plan sponsor of this multiple employer group health plan. The statute’s language that includes “a group or association of employers acting for an employer in relation to an employee benefit plan” is only sufficient as far as it goes.

However, as an "employer" and sponsor of a group health plan, it should be clearly expressed that the existing ERISA requirements for an employer group health plan apply in the same manner to the association health plan sponsor.

These are: the ACA and HIPAA rules for insured and self-insured group health plans; a fully insured group health plan is subject to state regulation; a self-insured group health plan would not be subject to state relation as any other self-insured group health plan; the fiduciary responsibility standards applicable to a group health plan; and finally, ERISA preemption applies as it does today.

A final comment, it would provide some assurance to participants if, as under current practice, the agency provides an advisory opinion to proposed association health plan sponsors that the arrangement meets the conditions set forth in any final regulations.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

W Schiffbauer