



**Independent Insurance Agents
& Brokers of America, Inc.**

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March 6, 2018

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

SUBMITTED VIA www.regulations.gov

RE: Definition of Employer-Small Business Health Plans (RIN 1210-AB85)

To Whom It May Concern:

On January 5, 2018, the Department of Labor (DOL) released a proposed rule on association health plans under the Employee Retirement Income Security Act (ERISA). The proposal seeks to broaden the criteria under ERISA Section 3(5) for determining when employers may band together to offer an association health plan (AHP). In response to the proposal the Independent Insurance Agents & Brokers of America, Inc. (IIABA)¹ received several comments from our members that expressed a wide variety of opinions. For example, some IIABA members expressed a desire to use AHPs for their own small businesses, yet others expressed concern that the proposal could lead to adverse selection or other problems in the employer-sponsored health insurance market as well as the small group and individual health markets.

Because the regulation of AHPs resulted in differing opinions from IIABA members, IIABA is limiting its comments to two areas of commonality:

- (1) IIABA members uniformly expressed the opinion that independent agents and brokers play an important role in the placement of health insurance, particularly for small and medium sized businesses and as such any changes to AHP regulations must maintain an appropriate role for agents and brokers; and
- (2) IIABA supports the state regulation of insurance and as such urges the DOL to continue to defer to state regulation particularly in the vital areas of AHP solvency regulation and consumer protection.

¹ IIABA is the nation's oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of insurance agents, brokers, and employees. IIABA represents independent insurance agents and brokers in all fifty states who offer customers a choice of policies from a variety of insurance companies across all lines of insurance—property, casualty, life, health, employee benefit plans and retirement products. These broad offerings allow IIABA members to assess the financial needs of their customers on a holistic basis.



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Independent agents and brokers must be able to appropriately support and service AHPs.

The role of the independent agent and broker in selling and servicing health insurance goes far beyond providing advice to help consumers select the most appropriate health insurance coverage for their needs. Agent and broker interaction with a consumer, including individuals and small businesses, is not a one-time transaction. Agents and brokers also educate individuals and employers about complexities in plan design and cost sharing options and requirements, health benefits, tax impacts and other compliance requirements. In addition, agents and brokers provide member claims and billing advocacy. Agents and brokers further provide innovative ideas to individuals and employers on how to develop accessible, affordable, and sustainable health plans to meet their long-term needs.

Accordingly, it is important that any final rule is drafted in such a way that it does not favor certain distribution mechanisms for advice and service related to AHPs over the independent agency system. Allowing trained independent agents and brokers to appropriately advise individuals and businesses in relation to AHPs will certainly only serve to increase the success of any AHP.

State laws and regulations include many important consumer protections that should be preserved.

The regulation of AHPs is colored by the fact that they constitute Multiple Employer Welfare Arrangements (“MEWAs”). Under the Employee Retirement and Income Security Act (“ERISA”), states have broad authority to apply their insurance laws to self-insured MEWAs. Many states regulate self-insured MEWAs like an insurance company. State authority to regulate fully insured MEWAs, however, is much more limited. Under ERISA, states may not regulate fully insured MEWAs directly, except by establishing reserve and contribution levels to ensure the solvency of the MEWA. However, states are free to regulate the insurance provided to a fully insured MEWA. Although the DOL has never done so, the agency has authority under ERISA to exempt self-insured MEWAs from state laws other than those that regulate reserve and contribution levels.

In the introduction to the proposed rule, the DOL solicits public comment on whether it should exercise this authority for AHPs. IIABA supports the state regulation of insurance and believes that state insurance regulators are best positioned to oversee issues related to consumer protections and insurer/ MEWA/AHP solvency in a particular state. Demographics, population size, healthcare costs, access to quality healthcare, and other issues that impact health insurance markets vary from state-to-state, and as such it is important that state insurance regulators are not unduly restricted in their ability to oversee the health insurance options available in a state market. Limiting the ability of states to oversee these issues will only serve to destabilize state insurance markets, including employer-based insurance markets as well as the individual and small business markets under the Patient Protection and Affordable Care Act. IIABA hopes that the DOL will seriously consider the potential for unintended consequences should the Department choose to make changes to the ability of states to oversee important aspects of AHP regulation, particularly as it applies to self-insured AHPs.



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Finally, should the DOL move forward with the January 5 proposal IIABA urges the Department in drafting a final rule to consider current state best practices for AHPs to ensure that any AHP is well-operated and financially sound, and consumers are protected.

In conclusion, IIABA thanks the DOL for the opportunity to provide comments on this important issue. Please contact our office at (202) 863-7000 should you wish to have additional information regarding our comments.

Sincerely,

A handwritten signature in black ink that reads "Jennifer M. Webb".

Jennifer M. Webb
Counsel, Federal Government Affairs