



February 10, 2024

Submitted via <http://www.regulations.gov>

Julie Su
Secretary, Department of Labor

Lisa M. Gomez
Assistant Secretary, Employee Benefits Security Administration

U.S. Department of Labor
Attention: Proposed Rescission of AHP Final Rule RIN 1210–AC16
Room N–5655, 200 Constitution Ave. NW
Washington, D.C. 20210

Re: Definition of “Employer”-Association Health Plans (RIN 1210–AC16)

Dear Secretary Su and Assistant Secretary Gomez:

On April 8, 2020, the Trustees of the ICI Benefits Consortium (“ICIBC”) submitted an advisory opinion request to the United States Department of Labor (“DOL”). The advisory opinion request sought confirmation that the ICI Benefits Consortium Health Plan is a single “employee welfare benefit plan” under § 3(1) of ERISA maintained by a “group or association of employers” within the meaning of § 3(5) of ERISA. Specifically, the request asked the Department to confirm that the Plan is a “multiple employer plan” and that each participating employer did not establish a separate single employer welfare benefit plan due to the employer’s participation in the plan.

To date, the DOL has not issued an advisory opinion to the ICIBC, notwithstanding multiple inquiries directed to the DOL by Members of the U.S. Congress. On April 6, 2023, the ICIBC filed a complaint for declaratory and injunctive relief against the DOL based upon its refusal to issue an advisory opinion.¹ As noted in the complaint, absent an affirmative advisory opinion, the DOL could argue that the Trustees of the Consortium have breached their fiduciary duties under ERISA by using commingled funds held in trust for the good of the entire ICIBC. This matter is still pending before the United States District Court of the Southern District of Indiana.

The ICIBC is structured in accordance with DOL Advisory Opinion 2017-02AC and the Trustees have made every effort to comply in good faith with DOL guidance. Nevertheless, the DOL

¹ *ICI Benefits Consortium v. United States Department of Labor*, 1:23-cv-00603-JPH-MG, United States District Court for the Southern District of Indiana.

refuses to issue an advisory opinion to the ICIBC and is actively opposing the ICIBC's efforts to seek clarification from the federal courts on its status.

Given this background, the ICIBC is skeptical of the DOL's intent in codifying and replacing pre-rule guidance relating to Pathway 1 MEWAs. The DOL fails to acknowledge that Pathway 1 MEWAs are a reasonable *option* for employers to provide comprehensive coverage to their employees. The ICIBC does not support rulemaking that would undermine the ability of employers to create and operate Pathway 1 MEWAs.

Sincerely,

A handwritten signature in blue ink that reads "Laura R. Bridges". The signature is written in a cursive, flowing style.

Laura Bridges, President
ICI Benefits Consortium

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