NATIONAL ASSOCIATION OF REALTORS®

February 20, 2024

The Honorable Julie Su
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: "Definition of Employer - Association Health Plans" (88 Fed. Reg. 87968 [Dec. 20, 2023]; RIN 1210–AC16)

Dear Secretary Su:

On behalf of 1.5 million members involved in all aspects of the residential and commercial real estate industries, the National Association of REALTORS® (NAR) appreciates the opportunity to comment on the above-captioned notice of proposed rulemaking. Most NAR members are not employees of the real estate brokerages with which they are affiliated; they are independent contractors paying for their business expenses and health insurance out of their own pockets. The Department of Labor (DOL) is proposing to rescind the 2018 rule which allowed self-employed individuals and small employers to group together to obtain affordable, comprehensive coverage through Association Health Plans (AHPs). Instead, DOL would rely on previous sub-regulatory opinions which determined whether a group or association of employers may sponsor an AHP based on the "facts and circumstances" of each case.

Recommendation 1: DOL should take the next step and propose a constructive and coherent national policy to restore small business access to comprehensive and affordable health insurance through AHPs.

REALTORS® are disappointed with DOL's latest proposal to strike but not replace the 2018 AHP rule. Hundreds of thousands of NAR members do not have health insurance.[1] More than half cite premiums and deductibles as too expensive, costing more than $6,000 per year.[2] Nearly two thirds do not qualify for cost sharing reduction subsidies for individual market health plans under the Affordable Care Act (ACA).[3] For those who do, ACA plans may appear comprehensive on the surface but the typical policyholder cannot access any meaningful health coverage until they pay at least $5,000-11,000 out of pocket to meet the deductibles.[4] For REALTORS®, with a nationwide median gross income of $56,400, these high deductibles and premiums erect substantial barriers to obtaining the type of health insurance they want and need.[5]

[1] Fifteen percent of REALTORS® reported not having health insurance in 2023. NAR Research Division, 2023 Health Insurance Survey (Nov. 2023).
[2] Id.
[3] Id.
[4] See Kaiser Family Foundation, Deductibles in ACA Marketplace Plans (Dec. 2023) at https://www.kff.org/private-insurance/issue-brief/deductibles-in-aca-marketplace-plans/.
[5] See NAR Research Division, 2023 Member Profile (July 2023) at https://www.nar.realtor/reports/member-profile.

Recommendation 2: DOL should consider and base any future regulatory decisions on the actual experience and data from AHPs formed under the 2018 rule.

REALTORS® are concerned that DOL is relying on inaccurate and unsubstantiated assertions to justify striking but not replacing the 2018 rule. State and local REALTOR® associations, among many other groups, offered AHPs in at least three states (Alabama, Nevada, and Tennessee). Attached please find a summary of REALTOR® experiences.

In short, REALTOR® AHPs:

1. Were not "skinny plans." REALTOR® AHPs were just as comprehensive but provided significantly lower premiums and deductibles, and much broader provider networks, than ACA plans;
2. Did not "adversely affect" ACA markets. REALTOR® plans drew healthy and unhealthy individuals, including many not previously enrolled in ACA plans;
3. Did not exclude pre-existing conditions. REALTOR® associations have a fiduciary duty to our members and comply with all federal and state laws.

REALTOR® plans and other AHPs provide an important base of actuarial experience and data for DOL to test assertions of "skinny plans" and "adverse selection," yet there does not appear to be any indication in the proposal that DOL either investigated or considered any of this AHP data when developing its proposal to rescind the rule.

Recommendation 3: Propose a rule that addresses the market evolution to a gig economy and restores affordable health coverage options for the self-employed.

In the 21st Century, more U.S. workers are turning from traditional employment-based settings where "employees are employed by an employer" to less traditional settings where workers are self-employed individuals with no employees.[6] The 50-year-old Employee Retirement Income Security Act (ERISA) and a "facts and circumstances," case-by-case approach to applying ERISA have <u>not</u> kept pace with the labor market's evolution toward a gig economy. DOL has acknowledged this and cited authority to address these marketplace developments as well as new policy and regulatory issues.[7] <u>In separate comments, the Coalition to Protect and Promote Association Health Plans has proposed a framework to deem self-employed individuals with no employees to be an "employer," an "employee," and a "participant" under ERISA solely for the purposes of participating in an AHP. NAR supports this proposal and urges DOL's consideration. It is time for DOL to update its policies to not only reflect today's market dynamics but also remove barriers to meaningful workplace benefits for self-employed individuals who choose the flexibility and freedom to work without a traditional employer</u>.

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[6] *See* Small Business Trends, Key Trends at Sole Proprietorships Over the Past 30 Years (Dec. 2015) at https://smallbiztrends.com/2014/09/key-trends-sole-proprietorships-past-30-years.html.

[7] See Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016); see also, Perez v. Mortgage Bankers Ass'n, 575 U.S. 92 (2015) and National Cable & Telecommunications Ass'n v. Brand X Internet Services, 545 U.S. 967 (2005).

Again, thank you for the opportunity to comment. REALTORS® stand ready to assist DOL in any meaningful and constructive effort to improve access to affordable health insurance for the nation’s small employers and self-employed individuals.

Sincerely,

Kevin M Sears

Kevin Sears
2024 President, National Association of REALTORS®

<u>REALTOR® Experiences with Association Health Plans (AHPs)</u>

Background

- The Baldwin REALTORS® in Alabama, the Greater Las Vegas Association of REALTORS®, the Kansas City Regional Association of REALTORS®, the Nevada REALTORS®, and the Tennessee REALTORS® each established a fully insured association health plan (AHP) formed in accordance with the final AHP regulations with an effective date on or after January 1, 2019.

- The Baldwin REALTORS® AHP covered all ten (10) of the Affordable Care Act's (ACA's) "essential health benefits" (EHBs), while The Greater Las Vegas Association, Kansas City Regional Association, Nevada REALTORS®, and Tennessee REALTORS® AHPs cover all ten EHBs except pediatric dental and vision (a component of pediatric services, which is the tenth EHB) because it is more cost-effective to provide coverage for these services through a stand-alone product.

- Participants in the Kansas City Regional Association of REALTORS® AHP averaged savings between 5 percent and 50 percent, while participants in the Tennessee REALTORS® AHP experienced 25 to 50 percent savings. The Nevada REALTORS® AHP participants saw savings from 2 percent up to 32.5 percent, while participants in the Baldwin REALTORS® AHP realized savings ranging from $150 to $15,000 per year.

Member Accounts

- For purposes of developing an amicus brief that was submitted to the Circuit Court of Appeals for the District of Columbia Circuit, participants of these state and local-based REALTOR® AHPs were asked the following questions: (1) If the AHP health coverage goes away on account of the District Court ruling, how would it affect you? and (2) Please share a short story about how your AHP has helped you and your family?

- A respondent from Baldwin REALTORS® AHP explained, "If our AHP coverage goes away, it would cost more money for health insurance, and I would be less likely to use it due to higher deductibles and co-pays. What I have through the AHP is better coverage at a better price." Another Baldwin AHP participant stated, "I would have to pay $450 more for a 'silver' plan instead of the 'gold' plan I have now." In response to the second question, a Baldwin AHP participant also explained, "I've been struggling with some chronic health issues, but have been unable to afford to go to a specialist and pay for the tests. I work two jobs, and I am a caregiver to a 94-year-old woman. Even with two jobs, I could not afford useful insurance on my own without this AHP. With this insurance, I've made some appointments and look forward to seeing what I can do to slow down the progression of the health issues I struggle with (Fibromyalgia and inflammatory arthritis)."

- The Greater Las Vegas Association of REALTORS® reported that real estate professionals between ages 55 to 64 experienced lower overall premiums, richer overall benefits, and access to a broader network. The savings in premiums for this age cohort averaged 11 percent, and out-of-pocket savings averaged 12 percent.

Additionally, thanks to increased education on health savings accounts tied to the AHP options, enrollees in those plans saved $3,600 annually.

- A REALTOR® in the Kansas City AHP reported that as a newly self-employed individual whose wife who recently retired, "[f]inding a long-term plan had been more difficult than I imagined... We have been making do with short term plans, but not comfortable with the limited coverage... The KCRAR Blue Cross plan has solved our health insurance problem." Another AHP participant discussed the limited marketplace options available in Kansas City and how the AHP offered by KCRAR affords the freedom to continue being a real estate professional. "This policy through KCRAR gives me the ability to step away from the uncertainty of the ACA Marketplace. The phenomenal work you have done to add major medical insurance for agents allows me to continue... without a worry ... my incredible career."

- The Tennessee REALTORS® also explained that a number of their members were previously enrolled in a non-ACA-compliant plan that did not cover pre-existing conditions. But, because the Tennessee REALTORS® AHP provides coverage for pre-existing conditions, these real estate agents gained access to the medical care that they needed. One real estate broker was especially thankful to be able to provide ACA-compliant and affordable coverage to their employed staff, which was much more attractive compared to what was available in the small group market. As health care costs in the state continued to rise, Tennessee REALTORS® searched for affordable health polices, which were sometimes only short-term plans, not designed for long-term coverage. Such coverage failed to ensure diseases or illnesses that happened outside of effective dates were paid for, prompting many individuals to seek more permanent, comprehensive solutions in the AHP.

- Lastly, a participant from the Nevada REALTORS® AHP relayed: "My wife and I are currently on the Nevada REALTORS® AHP health care plan and have saved about $500 per month from our previous Obamacare plan. My wife paid the penalty for 4 years and had no coverage until we got Obamacare last year. I am diabetic, so going without health coverage is not an option for me as I have many doctor visits and high prescription costs. When we got on the AHP this year, we upgraded our coverage and now have a deductible which is much lower, and the overall coverage is much better. In other words, we went from the worst plan under Obamacare to the best plan under Hometown Health for Northern Nevada and still saved money on the monthly costs. In addition, we are also able to go to the best hospital in Northern Nevada as well as have a network of local providers that were not covered under our previous plan. As we live in a remote area at Lake Tahoe, we would normally have to drive an hour or more to go to preferred providers under the previous Obamacare plan and now we can use local providers."