



March 2, 2018

The Honorable R. Alexander Acosta Secretary of Labor
C/O: Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue NW Washington, D.C. 20210
ATTN: Definition of Employer-Small Business Health Plans
RIN: 1210 -AB85

RE: Comments in Response to Notice of Proposed Rulemaking, "Definition of 'Employer' under Section 3 (5) of ERISA - Association Health Plans", RIN 1210 -AB85 Fed Reg. 614 (January 5, 2018)

Dear Mr. Secretary:

Middaugh Benefits Consulting is a firm that works with Association Health Plans (AHPs) in helping form MEWA (Multiple Employer Welfare Arrangement) operating as an ERISA "Employee Welfare Benefit Plan" (EWBP). The purpose of forming association plans is to provide group health coverage options for all members of the association and their employees that is better coverage than options available to them if they would be their own.

Middaugh Benefits Consulting applauds and supports efforts to expand access to group health insurance to small businesses across the nation. However, certain provisions in the proposed rules, if not adjusted, may serve to actually restrict coverage available to small businesses.

The provision in these proposed rules (Prop. Reg. 2510.3-S(d)(4)) that indicate Association Health Plans (AHP)s will be subject to expanded nondiscrimination rules that ban all group health plans from conditioning premiums for participating employer groups on health status would, over time, almost certainly create what is commonly called a "death spiral". If there is no adjustment for claims experience of a member firm (not an individual), the healthier and younger employer groups above 50 lives within the AHP will be solicited by competing insurance companies, and, receiving lower premium offers, will drop out of the AHP, leaving less healthy and smaller employers with higher premiums. This cycle will repeat, year after year, until the AHP expires.

The administration's overall objective when this proposed regulation was introduced was to be one of reducing regulatory restrictions on AHPs. The provision would function as a new regulatory restraint for AHPs and should be reconsidered. It contradicts the Administrative objective of reducing regulatory restraints and increasing health care options in the marketplace.

The proposed regulation also asked for comments to whether this proposed expansion of existing non-discrimination rules "... would create involuntary cross-subsidization across firms that would

discourage formation and use of AHPs." We believe that retention of this particular provision in the regulation would discourage the formation of new AHPs. If applied to existing successful AHPs, it could jeopardize their reserves and trigger rapid withdrawals by lower risk employers. Its impact would be to eliminate the way AHPs have been permitted to risk-rate groups within their plans for many years. Because of this we believe if some form of the non-discrimination rule is adopted for newly formed AHPs, existing AHPs should be "grandfathered". Plans that are meeting existing law as bona fide Association Plans under ERISA and are providing coverage to their member employers and their employees in a successful manner should not be disrupted.

Thank you for your consideration.

Jason Middaugh, Officer
Middaugh Benefits Consulting