CBG
CAPITAL BENEFIT
Group

March 5, 2018

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

RE: Comments in Response to Notice of Proposed Rule Making, Definition of "Employer" Under Section 3 (5) of ERISA-Association Health Plans, RIN 1210-AB85 83 Fed Reg. 614 (January 5, 2018)

Dear Mr Secretary,

Capital Benefit Services, Inc. and EPK & Associates, Inc. submit these comments regarding the Department of Labor RIN # 1210-AB85, definition of "employer" under section 3 (5) of ERISA-Association Health Plans. Our experience in designing, selling and administering fully insured "bona-fide" Association Health Plans dates back over 30 years. All of our plans qualify as MEWAs and provide all essential benefits as currently required by the Patient Protection and Affordable Care Act (PPACA). Our plans currently insure more 2,000 businesses with over 50,000 individuals in the State of Washington. Our plans are available to members in all counties and all cities in Washington State, offering comprehensive medical, dental, vision, life, disability and EAP benefits. A small employer in a rural community has access to benefit options normally reserved for only the largest employers. In the last 4 years alone our plans have paid nearly $600 million in health care expenses on behalf of small business employees and their families.

We obviously embrace Association Health Plans as an effective vehicle to serve Washington families, however it is our position with regard to the rules proposed, that implementation would seriously damage the current, helpful that role bona fide AHPs play in the market place for small business. It is our belief that the implementation of the proposed rules would almost certainly result in higher rates, reduction in benefits, and ultimately the deterioration of critical consumer protections.

Under current law (ERISA, HIPAA, PPACA) bona fide AHPs provide a stable and viable alternative for small business to obtain comprehensive, competitively priced health insurance. The State of Washington, in coordination with the above Federal Laws, has a statutory framework in place that has seen more than 500,000 Washingtonians purchase comprehensive health insurance through AHPs.

In addition to the statutory framework in place for several decades, many years of administrative rulings, advisory opinions from responsible agencies and federal court opinions have established the balance necessary to ensure AHPs can compete in the marketplace and continue to protect consumers from fraudulent practices and "sham" insurance coverage. By proposing to do away

with or "soften" the commonality of interest requirement, the potential for fraud and loss of consumer protections increases dramatically. When companies of common interest come together to form an Association they already have an affinity (builders, manufacturers, boat builders etc.) and often work together to promote common beliefs or goals. They usually do not form for the purpose of selling health insurance. The Association can thus offer an AHP as a member benefit that may help the employer in the operation of their business. Members in the Association may have a similar risk profile and often benefit from unique plan designs that more directly impact their employees (a more robust physical therapy or chiropractic benefit for example because of the physical labor required). Or other unique plan benefits such as a wellness initiative or a more extensive preventive care benefit. The point being, if you do away with the commonality requirement you destroy the uniqueness of the AHP.

We also strongly believe that when you have an Association of employers with a common interest that has been in existence for several years, the likelihood that a fraudulent or mismanaged health care plan will be implemented is significantly reduced. Should such a fraudulent plan result, the reputation and effectiveness of the Association in promoting its shared beliefs and interests could be irreparably harmed.

Our programs embrace a culture of health, safety and wellness. The use of claims experience, at a company level, is one of many assessment factors used in managing a stable risk pool. Our plans do not use individual risk assessments, individual health conditions or gender rating techniques. All plans have guaranteed renewability. All plans exceed network adequacy. All plans exceed laws regarding member disclosure and appeal rights. Our plans are filed annually with the Office of the Insurance Commissioner. The methodology used in the setting of our rates at the company level has been approved in federal court and administrative hearings. It is not discriminatory and, in fact, having this underwriting factor ultimately benefits all members in the AHP and provides for the long term financial stability of the plan. We believe that the "non-discriminatory" proposed rules are in direct conflict with multiple State and Federal Laws. We strongly urge that implementation of the "non-discriminatory" proposed rule be rejected in its current form.

As our experience has taught us, we are enthusiastic believers in AHPs as a vehicle to purchase competitive and comprehensive health care benefits for small business in the current health insurance environment. We also believe that the present statutory and regulatory framework strikes the necessary balance that is needed to keep these plans viable and provide adequate protections for consumers in this complicated market. Please consider the potential unintended consequences, specifically the certain increase in administrative burden and higher premiums for over 500,000 Washington citizens who love their AHP. For those reasons we ask that the proposed rules redefining an "employer" under section 3 (5) of ERISA be rejected.

Respectfully submitted,

Jonathan Hensley, CEO
Capital Benefit Services, Inc.

Elizabeth Croy-Griffin, President
EPK & Associates, Inc.