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Attention: Definition of Employer – Small Business Health Plans
RIN 1210-AB85
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Definition of "Employer" Under Section 3(5) of ERISA – Association Health Plans

To Whom It May Concern:

The U.S. Chamber of Commerce (the "Chamber") submits these comments to the Department of Labor in response to the proposed regulation under Title I of the Employee Retirement Income Security Act (ERISA) that would broaden the criteria under ERISA section 3(5) for determining when employers may join together in an employer group or association that is treated as the "employer" sponsor of a single multiple-employer "employee welfare benefit plan" and "group health plan" as those terms are defined in Title I of ERISA ("Proposed Rule"). This Proposed Rule would modify the definition of "employer," in part, by creating a more flexible commonality of interest test for the employer members than the Department of Labor had adopted in subregulatory interpretive rulings under ERISA section 3(5). At the same time, the Proposed Rule would continue to distinguish employment-based plans, the focal point of Title I of ERISA, from mere commercial insurance programs and administrative service arrangements marketed to employers.

The Proposed Rule was published in the Federal Register on January 5, 2018, by the Department of Labor ("DOL" and "the Department").[1] For purposes of Title I of ERISA, this Proposed Rule would also permit working owners of an incorporated or unincorporated trade or business, including partners in a partnership, to elect to act as employers for purposes of participating in an employer group or association sponsoring a health plan and also to be treated as employees with respect to a trade, business, or partnership for purposes of being covered by the employer group's or association's health plan.

The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial

[1] Proposed Rule, 83 Fed. Reg. 614-636. (January 5, 2018) (to be codified at 29 C.F.R. pt. 2510) [hereinafter referred to as the "Proposed Rule"] https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28103.pdf

membership in all 50 states. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. Therefore, we are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. These comments have been developed with the input of member companies with an interest in improving the health care system.

OVERVIEW

The U.S. Chamber of Commerce appreciates the opportunity to comment on this Proposed Rule. We support the expansion of Association Health Plans generally and hope that when a final rule is promulgated many of the state chambers of commerce which previously offered these Association Health Plans to their members before the Affordable Care Act (ACA) will again have an opportunity to provide valued health care coverage to their member companies. As the Proposed Rule recognizes, many prior AHPs ceased to be permitted following the enactment of the ACA due to the guaranteed issue requirements in the small group market and the standardization of plan benefits and rating rules. Other AHPs were disrupted by the "look through" doctrine as set forth in the CMS 2011 guidance.[2]

This comment letter includes general comments regarding the Proposed Rule's goals, approach and balanced discussion. The Chamber also offers specific recommendations on the application of the health non-discrimination provisions; the expansion to permit new organizations to form solely for the purpose of providing group health coverage; and the ability for working owners to elect to act as an employer for purposes of participating in, and as an employees for purposes of being covered by, the employer group's or association's health plan. Finally, we urge the Department to review additional considerations before finalizing the rule and suggest the inclusion of a safe harbor provision to protect against possible joint employer claims, a grandfathered provision to permit current successful AHPs to continue to exist in a grandfathered status, and a clarification of the "commonality requirement for Multiple Employer Plans.

GENERAL COMMENTS

We support the goals of the Proposed Rule, appreciate the measured discussion by the Department and applaud the careful consideration and inclusion in the Proposed Rule of various viewpoints heard by the Department to date.

We strongly support the stated ***principal objective*** of the Proposed Rule to expand employer and employee access to more affordable, high–quality coverage.[3] The Chamber also shares the belief that by treating health coverage sponsored by an employer association as a single group health plan ***may*** promote economies of scale, administrative efficiencies and transfer plan maintenance

[2] Insurance Standards Bulletin Series: "Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations" September 1, 2011. https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf

[3] Proposed Rule, 83 Fed. Reg. at 616.

responsibilities from participating employers to the association.[4] We agree that the "proposed rule ***may*** prompt some working owners who were previously uninsured and some small businesses that did not previously offer insurance to their employees to enroll in AHPs."

In addition to supporting the stated goal "to expand access to affordable health coverage," we applaud the Department's measured approach in stating possible and desired objectives as just that.[5] Unlike prior regulations issued to implement the Affordable Care Act, this Proposed Rule appropriately uses words like "objective," "goal" and "may" to avoid conflating desired outcomes with facts and certainty. As we fully appreciate this measured approach, we recall the Proposed Rule on the establishment of exchanges published on July 15, 2011. In that Proposed Rule, the prior administration stated in the Executive Summary that, "Exchanges will offer Americans competition, choice and clout;" that "consumers will have a choice of health plans to fit their needs;" and that "Exchanges will give individuals and small businesses the same purchasing clout as big businesses."[6] While these desired outcomes may have been the goal of exchanges, they were by no means certain. And now, six and a half years later we know that the goals we had all hoped that the Exchanges would fulfill (which the prior administration improperly stated as facts) have since failed to be achieved. Exchanges *do not offer* Americans competition, choice and clout. Consumers *do not have* a choice of health plans to fit their needs and perhaps most relevantly as we file these comments, exchanges *do not give* individuals and small businesses the same purchasing clout as big businesses. It was improper and disingenuous to state goals as inevitable outcomes and we appreciate the appropriate language used in promulgating this Proposed Rule.

Thirdly, we appreciate the Department's careful consideration in this Proposed Rule of various views on the myriad of issues. Throughout the Proposed Rule, the Department states the current law and regulations as they apply, mentions concerns from stakeholders on one side of the issue and then discusses concerns from other stakeholders which hold a contradictory view. In the preamble's discussion about the health nondiscrimination protections, the first paragraph illustrates this inclusive considerate approach beginning with "some stakeholders and experts have expressed concerns that …." and proceeding in the next paragraph with "[a]lternatively, some have argued that …."[7] This section of the preamble then concludes with a specific solicitation of comments on the issue.[8]

SPECIFIC RECOMMENDATIONS

There are four specific and complex issues in the Proposed Rule that are of particular interest to the U.S. Chamber of Commerce and while it is clear that the Department appreciates the advantages and disadvantages of finalizing the proposed changes, we would like to offer additional suggestions for consideration. While we support the stated goals for these specific changes, we have some concerns and suggested modifications with the Proposed Rule's: revised bona fide group and pre-existing organization criteria; application of health non-discrimination provisions; definition of working owner, and consideration of the option to self-insurance.

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[4] Proposed Rule, 83 Fed. Reg. at 616.
[5] Proposed Rule, 83 Fed. Reg. at 614.
[6] Establishment of Exchanges and Qualified Health Plans; Proposed Rule, 76 Fed. Reg. at 41,866 (July 15, 2011) (to be codified at 45 C.F.R. pts. 155 and 156) [hereinafter referred to as "Proposed Rule"].
[7] Proposed Rule, 83 Fed. Reg. at 623.
[8] Proposed Rule, 83 Fed. Reg. at 624.

Revising Bona Fide Group & Pre-existing Organization Criteria

The Chamber supports the underlying goal to "expand access to affordable health coverage among small employers and self-employed individuals" and would also like to see many different entities offer Association Health Plans and "increase association coverage options available to American workers."[9,10] We also believe fervently in the notion of competition and choice. Further, we support allowing a bona fide employment nexus to be satisfied based on a commonality of interest if there is a common industry (same trade, industry, line of business or profession) and/or a common geography (principal place of business in a region that does not exceed the boundaries of the same state or the same metropolitan area - even if the metropolitan areas includes more than one state.) However, we believe that these clarifications as to how commonality of interest determinations are made should only be applied when assessing whether a previously existing organization formed for a bona fide purpose other than offering health coverage is an employer for purposes of section 3(5) of ERISA.

As the Proposed Rule mentions, employers in the past searching for more affordable coverage have been taken advantage of by bogus entities selling "affordable coverage" and collecting premiums only to have payments withheld on legitimate medical claims. Without modifying the pre-existing organization criteria and the bona fide association language, the Proposed Rule already includes significant changes to help working owners and small businesses to purchase coverage through an Association Health Plan. We are hopeful that by clarifying the commonality of interest determination to be met by common industry or geography and applying that clarification to previously existing bona fide associations, coverage access will increase tremendously.

In the interest of seeing these AHPs thrive and provide new affordable, meaningful and reliable forms of coverage to working owners and small businesses, we would encourage the Department to initially limit the Proposed Rule's expansion of associations that may offer AHPs to those associations currently in existence. If the Department remains committed to allowing AHPs to be offered by new associations formed solely for the purpose of offering health coverage, we urge the Department to delay this additional expansion. We recommend that the Department first permit existing bona fide associations to begin offering AHPs so that analysis can be performed to determine whether additional changes or guard rails may be helpful. Only after three years of this initial expansion after the final rule's effective date should the Department consider further expanding the ability to offer AHPs to new associations formed solely for the purpose of offering coverage.

Application of Health Non-Discrimination Provisions

The Proposed Rule carefully explains two distinct concerns and perspectives with regard to the need for and appropriateness of applying health non-discrimination protections to AHPs. While we understand both perspectives, the Chamber suggests an alternate way to handle these seemingly divergent views. We would suggest that there is a way to apply the same rules to AHPs as those that currently apply to other single employer large group plans which would both protect less healthy individuals from discrimination but also appropriately allow premiums to reflect the risks of the populations covered.

[9] Proposed Rule, 83 Fed. Reg. at 614.
[10] Proposed Rule, 83 Fed. Reg. at 620.

One Perspective: Why AHPs Must Include Health Non-Discrimination Provisions

As the Proposed Rule states, there are concerns among some that AHPs would create adverse selection if "one set of plans operates under rules that are more advantageous to healthy individuals."[11] We appreciate that adverse selection may be exacerbated if AHPs are able to select healthy groups by "setting rates to the detriments of unhealthy groups."[12] To placate these concerns, it would seem that health non-discrimination provisions are necessary and that AHP rates shouldn't be permitted to vary based on health status.

Another Perspective: Why AHPs Should Not Include Health Non-Discrimination Provisions

The Proposed Rule also articulates the concerns of the opposing view which suggests the need to *consider* risk when setting premiums, arguing that "the *presence* [emphasis added] of non-discrimination rules may create instability in the AHP market, as employers with disproportionately unhealthy employees seek to join AHPs to lower their rates."[13] And the Proposed Rule further acknowledges this viewpoint: "[m]ore actuarially appropriate pricing where premiums match risk tends to lead people to buy the efficient amount of coverage, rather than underinsuring or overinsuring…and also reduces the likelihood that insurance markets [will] deteriorate into adverse selection spirals."[14]

Current Applications: Health Non-Discrimination Provisions in Single Employer Large Group Plans

Currently, single employer large group plans do not (and cannot) discriminate against *individuals* based on a health factor, either by varying a particular individual's premium or by denying that individual employee coverage. Premiums in these group health plans may not vary from individual to individual based on the specific claims experience of different individuals. One employee cannot be charged more because he/she has asthma or she/he has had cardiac surgery. We support the proposal to "build on the existing health non-discrimination provisions applicable to group health plans under HIPAA, as amended by the ACA" but would suggest a further change to synchronize the way the non-discrimination rules, as they currently apply to single employer large group plans, are applied to AHPs.[15]

As the Proposed Rule also discusses, the HIPAA/ACA health non-discrimination rules permit large group plans to vary premiums between different groups of employees provided those "groups are defined by reference to a bona fide employment based classification."[16] While these rules generally "prohibit health discrimination *within* groups of similarly situated individuals, they do not prohibit discrimination *across* different groups of similarly situated individuals."[17] For example, a group health plan may categorize employees into two similarly situated groups based on employee classification such as part time and full time. This group health plan may

[11] Proposed Rule, 83 Fed. Reg. at 623.
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Proposed Rule, 83 Fed. Reg. at 624.
[17] Ibid.

then assess the premiums for each of the two groups on an aggregate basis: assessing the premiums for all full-time employees at a certain rate and assessing the premiums for the entire group of part-time employees at another rate based on the aggregate health factors of the two different similarly situated categories of employees.

Applying These Rules to AHPs to Protect Individuals While Pricing For Risk

It seems appropriate that if different member companies purchase coverage through an AHP in order to be part of a single employer large group plan, these member companies shouldn't be later permitted to be treated as a distinct group for purposes of risk and premium assessments, although section 702 of ERISA and the current underlying regulations do not compel that result. We agree that if association member companies choose to enroll in an AHP and benefit from that AHP's designation as a single employer large group plan and the market and rating rules that go with it, they cannot then retain their separate individual company status for purposes of applying the health non-discrimination rules. However, we do believe that there is an appropriate way to allow for premiums to be varied and assessed within AHPs to accommodate and reflect risk of different populations. We recommend extending the current "similarly situated" designation within an AHP as it exists in other single employer large group plans.

While we support the decision and the policy arguments for not allowing member companies to be considered similarly situated individuals for premium purposes, we would propose that within an AHP all similarly situated individuals may be grouped across member companies for purposes of assessing risk. Just as in a single employer large group health plan, part-time employees may be on aggregate assessed premiums that reflect the risk of the entire part time employee population, we would recommend that similar aggregation be permitted in an AHP across member companies.

For example, suppose the XYZ Association offers an AHP and all three of its member companies (Company X, Company Y, and Company Z) elect to be part of the AHP. We agree with the Department that within an AHP like this, employees of one member (Company X) cannot/should not be considered similarly situated individuals for purposes of assessing risk and setting premiums separately based on the aggregate health status of that member's (Company X's) employees. However, we would suggest that ***across*** the member companies' similarly situated classifications should be permitted so as to allow premiums to vary on aggregate based on the risk of those cross company classifications. For example, all part-time employees of all of the AHP's member companies could be categorized as similarly situated – just as they are in a single employer large group plan. In this example, all part-time employees of Company X, all part-time employees of Company Y and all part-time employees of Company Z would/could be considered one distinct group (all part-time employees of all member companies in the AHP) for purposes of evaluating risk on aggregate for assessing premiums for this distinct group. We would suggest that the same bona fide employment based classifications be permitted for determining similarly situated groups ***across*** member companies within an Association.

This proposal would protect the individual employees in the same way that individual employees are currently protected when buying coverage in a single employer large group plan while also allowing premiums to be assessed based on the aggregate risk of similarly situated individuals.

Definition of Working Owner

Many members of ours as well as those of other state and local chambers of commerce across the country are micro-employers and sole-proprietors. We have long heard frustration and consternation from these Chambers and our own members about the challenges these companies face in offering/purchasing health coverage for their employees and themselves. We applaud the Department's attention to the plight of these employers and working owners and appreciate the care with which the Proposed Rule works to thread the needle of providing them access to affordable and meaningful coverage through an AHP and to avoid further destabilizing the already vulnerable individual market.

We agree with the perspective that AHPs should provide an avenue for those employers and working owners who are in fact truly working and deriving earned income from these businesses and are ineligible for other subsidized group health plan coverage under another employer or a spouse's employer, with one change. These guardrails generally seem appropriate to ensure that AHPs can provide coverage to those working owners without access to other employment based coverage.

We urge the Department to incorporate one change to clarify that a subsidized "group health plan" that disqualifies a working owner from AHP participation does not include a group health plan consisting solely of HIPAA excepted benefit coverage. By making this clarifying change, the Department would preserve the long-established statutory distinction between excepted benefit coverage and other health plan (i.e. major medical) coverage. Excepted benefits by definition provide only limited health coverage (e.g., dental/vision/EAPs) or consist of income replacement benefits (e.g., accident/disability/excepted benefit hospital indemnity or other fixed indemnity). Excluding excepted benefits from the definition of "group health plan" in this context is consistent with the stated objective of identifying true working owners, while appropriately permitting working owners with access to only excepted benefits (and not major medical coverage) to participate in the AHP.

Despite our support of the overall proposal, we have heard concerns about how to best assess the risk of these member companies if working owners elect to enroll in an AHP. We encourage the Department to think about an appropriate employment-based classification that would allow AHPs to appropriately aggregate similarly situated working owners across an AHP, evaluate aggregate risk for this particular classified group within the AHP membership and assess premiums appropriately.

Consideration of the Option to Self-insure

The U.S. Chamber of Commerce has historically supported proposals to allow AHPs to offer coverage on a self-insured basis for precisely the reasons mentioned in the Proposed Rule. When a group health plan elects to self-insure, it is often able to enjoy additional flexibility and lower costs because of the ability to pre-empt state benefit mandates and avoid additional overhead costs associated with fully-insured group health insurance policies. While we are all too aware of the mismanagement and abuse of self-insured MEWAs in the past and the shadow that these arrangements and their practices have cast on AHPs generally, we also agree with the

Department's overarching goal and recognition "that well-managed self-insured AHPs may be able to realize efficiencies that insured AHPs cannot."[18]

In light of the possibility of fraud and mismanagement that has accompanied many self-insured MEWAs in the past, we do recommend that the ability for an association to offer a self-insured AHP be restricted to only pre-existing associations which were formed for purposes other than offering health coverage. Associations that have been in existence for a minimum of three years with 75% continuous membership should be the only associations permitted to offer a self-insured AHP. Given the concerns we have expressed regarding the proposed ability for newly formed associations created expressly for the purpose of providing health care coverage to offer AHPs, we recommend that if the Department permits this expansion in the Final Rule it prohibits these newly formed associations from offering self-insured AHPs. We remain skeptical of the ability for these new associations to properly manage their membership while also establishing an association health plan and are even more concerned about the ability to appropriately assess their membership's risk and assess sound premiums to cover possible claims.

ADDITIONAL CONSIDERATIONS

In addition to some of the larger specific issues addressed in the Proposed Rule on which the Department requested feedback, the Chamber offers additional considerations for the Department to evaluate and include in the Final Rule. As the Department considers how other employment laws and existing coverage options may be implicated and affected by the expansion of AHPs, we urge the consideration of: a safe harbor in the Final Rule to protect AHP members and associations themselves from joint-employer liability; a grandfathered provision to protect existing successful Association Health Plans permitted by states; and a clarification of the "commonality" requirement for Multiple Employer Plans.

Safe-Harbor to Protect AHP Members from Joint-Employer Liability

In modifying the definition of employer to allow an association to be treated as an employer-sponsor of a single employer group health plan, the Department may be inadvertently exposing businesses and associations to liability under the joint-employer claim. This exposure is not necessary or appropriate and can be mitigated by incorporating a safe-harbor protection. Without such a safe-harbor, we remain concerned that the Proposed Rule will not realize its desired and worthy goal of expanding access to affordable health care coverage.

Federal and state employment laws traditionally defined a joint employer as one who exerts direct and immediate control over essential employment terms of another entity's employees. However, in recent years, a litany of cases have expanded the concept of "control," creating a myriad of disparate precedents and varying judicial decisions at the federal circuit court level. Many cases have held that businesses associated with another business that has taken illegal employment action can also be held liable. The concept of joint employment has been in a constant state of flux creating extreme legal uncertainty for businesses; there remains significant concern that almost any business relationship between or among companies could subject a company to a joint employer claim. Therefore, a safe harbor is absolutely essential to protect businesses from an

[18] Proposed Rule, 83 Fed. Reg. at 633.

argument that AHPs create joint employer liability, so that franchise employers will not be reluctant to participate in an AHP.

The Chamber suggests the Department include the following safe harbor provision in the Final Rule to provide assurances that participation in an AHP will not be used as a factor to establish joint-employer liability:

> "Provided an AHP is established and maintained in accordance with the provisions set forth in this rule, the AHP, although created pursuant to the expansion of the definition of "employer" under Section 3(5) of ERISA, shall not create or imply joint employer liability among the association employer-members for all federal and state purposes."

Alternatively, if the above language is of concern to the Department, we propose a limited safe-harbor for federal labor law purposes as follows:

> "Provided an AHP is established and maintained in accordance with the provisions set forth in this rule, the AHP, although created pursuant to the expansion of the definition of "employer" under Section 3(5) of ERISA, shall not create or imply joint employer liability among the association employer-members for federal labor and employment law purposes."

Finally, if the Department is unable to provide one of the above broader safe harbor provisions above, the Chamber urges the Department to include at a minimum the narrow safe-harbor as follows:

> "Provided an AHP is established and maintained in accordance with the provisions set forth in this rule, the AHP, although created pursuant to the expansion of the definition of "employer" under Section 3(5) of ERISA, shall not create or imply joint employer liability among the association employer-members for purposes of Section 510 of ERISA."

Grandfather Provision to Protect Current AHPs

As the Executive Order directed ("To the extent permitted by law and supported by sound policy, the Secretary should consider expanding the conditions that satisfy the commonality-of-interest requirements") and as the Proposed Rule intends to ("e*xpand* [emphasis added] access to health coverage by allowing *more* [emphasis added] employers to form AHPs"), we urge the Department to include a grandfather provision in the Final Rule to protect those existing AHPs as permitted by law now and allow these associations to continue to provide the valued coverage their member companies enjoy.[19,20]

Given that the stated goal of the Executive Order and the explicit purpose of the Proposed Rule is to *expand access* and *allow more* employers to form AHPs, we urge the Administration to incorporate language in the Final Rule to protect current AHPs. Without incorporating a

[19] Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States." October 12, 2017

[20] Proposed Rule, 83 Fed. Reg. at 614.

grandfather provision, efforts to expand access and allow more employers to form AHPs would ironically reduce access and take away AHP coverage from some employers who already enjoy it. Therefore, to minimize the Proposed Rule's impact on existing AHPs, DOL should adopt a grandfathering rule to protect fully-insured AHPs in existence prior to January 5, 2018 (publication date of the Proposed Rule).

As the Proposed Rule is written, the Chamber is aware of existing AHPs which would be significantly disrupted unless they could be permitted to continue to exist subject to the new interpretation of the nondiscrimination requirements in section 2510.3-5(d) *without regard to paragraph (d)(4).* With this modification, existing AHPs could continue their current practices as permitted by law of experience rating each employer member, including new members who purchase coverage after January 5, 2018.

As a condition of being exempt from the application of paragraph (d)(4), grandfathered AHPs like the one offered by AWB would be prohibited from accepting as a member, or offering coverage to, any employer with fewer than two employees. This condition would eliminate the risk of discriminating against any single employee or self-employed individual.

In a small group market like Washington State's, the proposed grandfathering rule would provide even greater choice for small businesses —while protecting against discrimination of individuals based on their health status — by allowing small businesses to choose from:

- Community-rated comprehensive benefit plans available in the small group market;
- Experience-rated comprehensive benefit plans in the existing AHP market; and
- Less comprehensive benefit plans in the newly expanded AHP market that are experience-rated as though all employers participating in the AHP are a single large employer.

Clarification of the "Commonality" Requirement for Multiple Employer Plans

As the Department looks at changing the definition of employer for AHPs, we encourage the agency to also clarify the application of this definition as it applies to Multiple Employer Plans (MEPs). The Chamber maintains that the strict "commonality" requirement has been mistakenly applied to retirement plans; however, the uncertainty has stifled growth and innovation in this market. Therefore, clarifying the commonality requirement could go a long way toward expanding retirement plan options, especially for small businesses.

ERISA Section 3(5) defines an employer as "any person acting directly as an employer, or *indirectly in the interest of an employer* [emphasis added], in relation to an employee benefit plan." Therefore, the independent provider of a MEP can be construed as a person acting indirectly in the interest of an employer in relation to an employee benefit plan. However, the Department has issued contradictory guidance which has created confusion for potential MEP sponsors. In a 2012 ERISA Advisory Opinion, the Department found that the purported plan sponsor was not a bona fide group or association of employers because there was no genuine organizational relationship between the employers.[21] By way of contrast, more recently, the

[21] See, ERISA Adv. Op. 2012-04A, (May 25, 2012).

Department issued guidance that provides that a state-sponsored MEP meets this "commonality" requirement even though the only nexus between employers is residing in the same state.[22]

Given the advantages of MEPs – including centralized payroll, investment line-up, annual reporting and auditing which translates to substantial economies of scale and cost efficiencies – we encourage the Department to clarify this confusion. Providing such clarity could expand the use of MEPs through trade associations and other organizations that work closely with small

III. CONCLUSION

We urge DOL to continue to consider opportunities to expand access to affordable meaningful health coverage without further destabilizing the vulnerable individual and small group markets. It is a challenging task to try to create additional coverage options and alternatives for businesses while at the same time working to shore up these other deteriorating markets. The Chamber shares the goal of the Department in achieving both outcomes and will continue to work to pass legislation and encourage regulatory changes to bolster funding and controls to prevent further manipulation and harm to these markets. We look forward to continuing to work together in the future.

Sincerely,

Katie Mahoney
Executive Director
Health Policy
U.S. Chamber of Commerce

[22] Interpretive Bulletin 2015-02.