



March 6, 2018

Via Regulations.gov

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—Small Business Health Plans

On behalf of Heating, Air-conditioning & Refrigeration Distributors International (HARDI) I write to offer comments on the Department of Labor's Proposed Rule regarding the Definition of Employer—Small Business Health Plans [*RIN 1210-AB85*].

HARDI is a trade association comprised of nearly 1,000 member companies, nearly 500 of which are U.S.-based wholesale distribution companies. More than 80 percent of HARDI's distributor members are classified as small businesses that collectively employ over 35,000 U.S. workers, representing more than \$35 billion in annual sales and an estimated 80 percent of the U.S. wholesale distribution market of heating, ventilation, air-conditioning and refrigeration (HVACR) equipment, supplies, and controls.

Healthcare costs, including employer provided insurance, have dramatically increased in price in recent years, making healthcare policy a top concern for small business owners across the country. For a typical HARDI Distributor, premiums for traditional indemnity insurance plans cost over \$400 per month for an individual employee and over \$1,200 per month for an employee and family. This is an increase of 27 and 31 percent respectively since 2012. To help combat against increases in premiums, President Trump issued an Executive Order on October

12, 2017 directing agencies to find ways to “facilitate the purchase of insurance across State lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people.” Executive Order 13813, titled, “Promoting Healthcare Choice and Competition Across the United States,” directed the Department of Labor to propose regulations to expand Association Health Plans (AHPs). This proposed rule would accomplish that goal. HARDI supports the proposed expansion of AHPs to allow associations to provide a much needed service to their members, however some changes to the proposed rule are necessary to provide the best outcomes for employers.

HARDI proposed improvements to the regulation

Allowing employers to band together for the express purpose of obtaining health coverage

Existing AHP regulations require that an association not be formed with the express interest of providing a healthcare plan. The proposed changes, as outlined in section C(4)(a) “Employers Could Band Together for the Single Purpose of Obtaining Health Coverage,” would remove this requirement allowing associations to be created for the single purpose of providing healthcare plans. HARDI believes this low bar would create a class of associations acting essentially as commercial insurance providers with minimal internal interest in providing plans that promote “actuarial soundness, proper maintenance of reserves, adequate underwriting and other standards relating to AHP solvency.” Reversing this change would align the proposed regulation with the stated goal 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.” Traditional trade associations such as HARDI have a duty to provide the best programs for their members, by maintaining the requirement that associations cannot be formed

for the purpose of providing healthcare plans, this proposed regulation will empower traditional trade associations to provide AHPs that serve the best interest of employers while maintaining solvency in the AHP.

Disqualification of business owners eligible to participate in subsidized health plans

The proposed rule would limit eligibility for working owners to participate in AHPs offered to employees if the working owner is eligible for any “subsidized group health plan” including plans that provide less coverage than an available AHP. The proposed rule in section B(4)(C) seeks comment regarding whether this provision should be included in the final rule. HARDI opposes limiting working owners from participating in AHPs available to their employees.

Coverage of working owners transitioning out of the business

The proposed regulation in its definition of a working owner (section B(4)(C)) provides flexibility for start-up businesses and for changes in sales caused by economic activity, however the definition does not cover changes common for a working owner of a business as they transition towards retirement. Traditional healthcare plans continue to cover owners as they transition out of the business as long as they are providing services to the business. Often working owners remain employed by the firm as advisors to incoming working owners but have reduced hours or reduced income while materially participating in the operation of the business. HARDI recommends expanding the definition of a working owner to cover owners transitioning out of the business to qualify as long as they are providing services to the company. HARDI does understand that once an owner no longer provides services to the company, the owner is no longer a working owner, however, if an AHP does provide insurance to former employees (section B(4)(C)), former owners should also be able to qualify.

HARDI support for proposed regulations

Changes to the definition of “employer” under ERISA

Increasing the scope of an “employer,” as outlined in section C(4)(a) “Employers Could Band Together for the Single Purpose of Obtaining Health Coverage,” to include groups of employers participating through an employer association makes it far easier for many small businesses to provide healthcare plans to employees. When done through a bona-fide association, AHPs can provide plans that meet the needs of employees with the direction of the employer members of the association.

Expanding AHPs by expanding the definition of employer is an easy way to increase the pool of employees eligible for healthcare plans. The increased number of eligible workers can also bring down the cost of healthcare plans for small and medium sized businesses. These businesses also provide enough diversity in age and behavior, along with the nondiscrimination requirements included in the proposed rule, to spread the risk across a large population to keep premiums low, as outlined in sections 1.4, 1.5. and 1.6 of the Regulatory Impact Analysis. HARDI fully supports the changes to the definition of “employer” because it will reduce the cost of healthcare plans.

Strong nondiscrimination protections

HARDI supports the nondiscrimination protections outlined in section B(4)(d) of the proposed regulation. AHPs should comply with all nondiscrimination rules outlined by the Health Insurance Portability and Accountability Act (HIPAA). The nondiscrimination provisions in the proposed regulation will provide important protections for employers and employees

participating in AHPs.

HARDI appreciates the opportunity to provide input on ways that the Department of Labor can improve and finalize regulations allowing for the increased use of Association Health Plans to provide healthcare plans to employers and employees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Palmer Schoening". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Palmer Schoening
Vice President of Government Affairs
Heating, Air-conditioning & Refrigeration Distributors International