

February 20, 2024

U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefit Security Administration
ATTN: RIN 1210-AC16
Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210

RE: Association Health Plans
Definition of Employer -- RIN 1210-AC16

To Whom It May Concern:

The United Hospital Fund is grateful for the opportunity to write in support of the above-captioned regulation, which effectively rescinds an ill-conceived rule (RIN 1210-AB85, “the 2018 Rule”) on association health plans (AHPs).

UHF is a 145-year-old, independent, non-profit organization that works to build an effective and equitable health care system for every New Yorker. I direct UHF’s Health Insurance Project, which focuses on state and federal regulation of public and private insurance markets. I am also the author of two recent publications on AHP issues and the risks to New York’s markets.¹ Prior to joining UHF, I worked on health insurance issues for the NYS Assembly Committee on Insurance.

The 2018 Rule, as we noted in our earlier comment (<https://www.regulations.gov/comment/EBSA-2018-0001-0543>), created many opportunities for AHPs to undermine individual and small group markets through cherry-picking practices that use medical underwriting, age, gender and industry rating, and benefit design to siphon off lower-risk individuals and groups. Great care was taken in New York’s Community Rating/Open Enrollment law and the Affordable Care Act (ACA) to prevent these destructive and destabilizing practices. More recently, New York has added other protections, opting to redefine its small group market size as 1-100 employees, and trying to [ban](#) the sale of short-term, limited duration plans. The proposed full rescission would restore these market stability protections and also roll back a significant overreach by the Department of Labor in its redefinition of “employer,” as noted by the courts in *New York v. United States Department of Labor*.² Finally, we are sure you will receive comments from many individuals and organizations who applaud the rescission of the 2018 Rule because this action would greatly reduce the risk of fraud and insolvencies long associated with AHPs; we share those concerns.

Thank for your attention to this matter and please feel free to contact me if you have any questions.

Sincerely,

Peter Newell
Director, Health Insurance Project
United Hospital Fund

¹ *New York’s Small Group Market Isn’t Feeling Well and a Trump Administration Proposal May Make Things Worse* (<https://uhfnyc.org/publications/publication/new-yorks-small-group-market-isnt-feeling-well-and-a-trump-administration-proposal-may-make-things-worse/>); and *The Other Shoe Drops: Federal AHP Regulation Is Next Threat to Coverage in New York* (<https://uhfnyc.org/publications/publication/other-shoe-drops-ahp-regulation/>).

² 363 F. Supp. 3d 109,129 (D.D.C. 2019)