

February 19, 2024

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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" – Association Health Plans (RIN 1210 – AC 16)

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed regulation referenced above issued by the U.S. Department of Labor ("DOL") on December 20, 2023.

The Iowa Bankers Benefit Plan is a self-insured multiple employer welfare arrangement ("MEWA") providing health and benefits to employees of Iowa and Minnesota banks and related organizations (the "Plan"). The Plan is also recognized as a tax-exempt Voluntary Employees' Beneficiary Association ("VEBA") under Internal Revenue Code Section 501(c)(9). Established in 1978, the Plan has provided affordable, comprehensive health insurance for over forty-five years. The Plan currently has 275 participating employers, insuring approximately 10,000 participants. The Plan offers cost competitive plan options to participating employers, giving employers the flexibility to choose from a variety of plan designs.

The primary purpose of the proposed regulation is to rescind the 2018 association health plan ("AHP") rule. We are not opposed to the repeal of the 2018 AHP rule. Our organizations did not advocate for the expansion of the definition of "employer" under section 3(5) of the Employee Retirement Income Security Act of 1974 ("ERISA").

However, we are writing to express our concern that this rulemaking process may be used to undermine the integrity of "Pathway 1" industry-based multiple employer welfare arrangements ("MEWA"). Specifically, the proposed regulation states:

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In addition to the comments on rescission of the 2018 AHP Rule, the Department also seeks comments on whether the Department should propose a rule for group health plans that codifies and replaces the pre-rule guidance, issues additional guidance clarifying the application of the Department's pre-rule guidance as it relates to group health plans (including for example, the HIPAA nondiscrimination rules applicable to AHPs).

As the DOL is well aware, the pre-rule guidance spans decades. "Pathway 1" MEWAs have been structured over these decades in reliance on the underlying principle in these advisory opinions that a single employee welfare benefit plan may exist where a cognizable, bona fide group or association of employers (including a sub-group of employer members of a trade association) acts in the interests of its employer members to establish a benefit program for the employees of member employers.¹ As recognized by the DOL in these advisory opinions, the specific form or structure of "Pathway 1" MEWAs is not what's dispositive to whether it's considered a single employee welfare benefit plan. Rather, whether a single employee welfare benefit plan exists depends on the totality of the facts and circumstances, including how members are solicited; who is entitled to participate and actually participates; the powers, rights and privileges of employer members that exist by reason of their status as employers; and who actually controls and directs the activities and operations of the benefit programs.²

It's imperative any rulemaking relating to "Pathway 1" MEWAs not include arbitrary new requirements which may require expensive restructuring of MEWAs that have existed for decades and their status as "Pathway 1" MEWAs confirmed by the DOL multiple times through periodic audits. We ask that any rulemaking related to "Pathway 1" respect the structure of existing MEWAs that were set up in good faith in accordance with prior DOL advisory opinions and have been confirmed by the DOL over decades as single employee welfare plans.

Industry-based MEWAs, such as the Iowa Bankers Benefit Plan, provide affordable, comprehensive medical coverage to millions of Americans. We ask the DOL to preserve the integrity of industry based MEWAs. We are supportive of efforts to strengthen and reaffirm this important option for our members.

Sincerely,



Chad Ellsworth – Chief Administrative Officer

¹ DOL Advisory Opinions 2001-04A; 2017-02AC

² DOL Advisory Opinions 96-25A; 2001-04A; 2003-13A; 2017-02AC.

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