PUBLIC SUBMISSION

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Definition of Employer Under Section 3(5) of ERISA-Association Health Plans

Comment On: EBSA-2018-0001-0001
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General Comment

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Per your specific request for comments pertaining to the last sentence before footnote (19) in the proposed rule, as well as the following definition in Part 2510.3-5e: Dual treatment of working owners as employers and employees --

(2) The term "working owner" as used in paragraph (e) means any individual (iii) who is not eligible to participate in any subsidized group health plan maintained by any other employer of the individual or of the spouse of the individual;

Let me be blunt: I was shocked when I read that section, because it sounded like Obamacare's dreadful "Family Glitch" has reared its ugly head once again. I believe that the reference to "any subsidized group health plan" in paragraph (iii) is too broad and that it will be interpreted to exclude spouses from association plans who stay married, forcing them to buy family coverage that they cannot afford from their spouse's employer. (Just as the ACA excluded these same people from getting subsidies because the law's affordability equation failed to factor in the cost of coverage for both people in a marriage.)

Here is what the problem might look like: Coverage costs an employee working for Example, Inc. $180.00/month for an ACA compliant plan with a $3,000 deductible. Obviously, Example Inc. has subsidized this lucky employee. However, as soon as employee adds a spouse to their plan, the cost goes up to $925.00/month, leaving the unlucky spouse stuck with insurance that costs them $745.00/month. Why can't the unlucky spouse get out from under this burden and be able to purchase a more affordable plan through an association if they meet all the other requirements of a "working owner"?

In order to make insurance more affordable for the many self employed people who are facing this serious problem, the words "or of the spouse of the individual" must be deleted from the proposed rule. Section (e)(2)(iii) should be modified making it crystal clear that "working owners" will not continue to be trapped into buying expensive employer sponsored family plans that subsidize the employee and not the spouse, leaving the spouse to foot the bill for the entire cost of their own coverage. Keeping this language in the rule will only result in more and more spouses having to drop their coverage as the costs continue to skyrocket each year at a rate that is not sustainable.

So one might ask if there is any down side to removing this language from the final rule? I certainly can't think of one. Any spouse who is lucky enough to have a great family plan where the employer is able to subsidize both husband and wife will have no reason whatsoever to leave that wonderful employer sponsored family plan and join an association anyway. And even if they did leave, each "working owner" will be paying the full cost of their own AHP, unlike the heavily subsidized plans under Obamacare which led to the creation of the first Glitch. These plans will not cost the American taxpayer one dime, so why even have this language in the new rule?

Any new rule making that allows the "Family Glitch" to perpetuate and persist in our country in this manner is a lost opportunity to help millions of working families and small business owners who have suffered greatly under the ACA. I strongly urge you to carefully consider my comments so that the final rule will not continue to penalize a large number of married "working owners" for no apparent reason, who currently have little choice other than to pay up or go without.