



Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

614.464.6400 | [www.vorys.com](http://www.vorys.com)

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Linda R. Mendel  
Direct Dial (614) 464-8218  
Direct Fax (614) 719-4859  
Email [lrhendel@vorys.com](mailto:lrhendel@vorys.com)

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Via Federal eRulemaking Portal: <http://www.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  
RIN 1210-AB85

To Whom It May Concern :

The Department of Labor (DOL) noted that “[l]arge employers have a long history of providing their employees with affordable health insurance options” and that the association health plan (AHP) regulation “is needed to lower some barriers that can prevent many small businesses from accessing such options.” 83 Fed. Reg. 614, 626 (1/5/2018).

This comment is to suggest three other situations where barriers that prevent small businesses from accessing large group health plan benefits could be lowered. I think that lowering barriers in these situations would allow many individuals to participate in better and less expensive health coverage, with minimal risk.

**1. Control group with 25% ownership connection.**

A large employer may want to extend the benefits that it provides to employees in its control group to the employees of a joint venture. The joint venture, acting on its own, can only arrange for benefits on much less favorable terms.

Because plans covering employees of two or more trades or businesses that share a common control interest of at least 25% pose little risk to employees, such arrangements are excluded from the requirement to file Form M-1.<sup>1</sup> However, an exception from Form M-1 filing

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<sup>1</sup> “[I]n no event is reporting required by the administrator of an entity that meets the definition of a MEWA or ECE because...It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414(c) of the Internal Revenue Code.” 2017 Form M-1 Instructions, page 2.

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does not exempt such arrangements from state regulation as a multiple employer welfare arrangement (MEWA). State MEWA regulations can impose limitations and burdens that in effect prohibit the non-abusive and generally beneficial inclusion of joint venture employees in the benefits of a large employer with a significant ownership interest (i.e., at least 25% but less than 80%). That is especially problematic when the large employer assigns its employees to work at the joint venture.

ERISA Section 3(40)(B)(iii) specifically gives the DOL authority to exclude from the definition of a MEWA a group of trades or business with 25% common ownership. I ask that the DOL exercise that authority to allow a plan covering employees of two or more trades or businesses that share a common control interest of at least 25% not be treated as a MEWA.

**2. Continued participation in seller's benefits after the sale of a business.**

A buyer often wants a seller to continue to administer benefits for the employees of an acquired business for a period of time after the sale. Often, the buyer needs additional time after the sale to contract with vendors and set up for enrollment elections. In other cases, the buyer wants to spare employees of the acquired business the disruption of changing benefits during an enrollment year. Typically, it is not sufficient for the seller to provide coverage to just its former employees; the seller needs the buyer to provide coverage to all employees of the acquired business, including those that might be hired during the period prior to enrollment in the buyer's plans.

No Form M-1 filing is required for the continued participation of the buyer's employees in the seller's plan for a limited period after the sale of a business.<sup>2</sup> However, as is the case with Item 1, an exception from Form M-1 filing does not exempt such arrangements from state regulation as a MEWA and state MEWA regulations may impose limitations and burdens that in effect prohibit the continued participation of the buyer's employees in the seller's plans. I ask that the DOL define a MEWA to exclude participation of the employees of an acquired business in a seller's plans for a period that does not extend beyond the end of the plan year following the plan year in which the change in control occurs.

**3. Credit union.**

A large employer may form a credit union with a charter that limits depositors to employees and former employees (and the immediate family members of employees and former employees) of the large employer. The credit union would be owned by its depositors so that, despite the credit union's connection with the employer, the credit union is not part of the employer's control group. I ask that the DOL define a MEWA to exclude a plan that covers both

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<sup>2</sup> "[I]n no event is reporting required by the administrator of an entity that meets the definition of a MEWA or ECE because... It provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M-1 filing and is temporary in nature (i.e., it does not extend beyond the end of the plan year following the plan year in which the change in control occurs)." 2017 Form M-1 Instructions, page 2.

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(a) the employees of a large employer and (b) the employees of a credit union, in cases where the credit union is limited by its charter to accepting deposits from employees and former employees of that large employer and their immediate family members.

Thank you for your consideration. I am making these comments in my individual capacity and not on behalf of my employer.

Very Truly Yours,



Linda R. Mendel