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

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General Comment

Our church obtains its health insurance from an Association Health Plan. This vehicle of obtaining coverage has allowed us to offer our employees coverage and we wouldnt have been able to find the same coverage in small group community-rated market (or exchange). AHPs offer a great value and allow a way to attract and retain talent by providing great benefits.

We are writing today to express concerns about the proposed EBSA-2018-0001. Expansion of AHPs is a great thing for healthcare and offers small and medium sized businesses more options for coverage and also provides for affordability. This is critical when companies are competing for talent. We applaud the goal of expanding AHP coverage, however, there are several provisions in the proposed rule that would negatively impact the market and prevent the expansion of AHPs, while also having significant impact on current insurance markets that could result in rates increasing or selection decreasing:

1) Require associations to be pre-existing - AHPs should only be able to be formed by existing associations whose leader is willing to serve as a fiduciary. Without this requirement, there could be significant fraud and abuse. Requirements for Associations to have been in existence for at

least 5 years and have a valid tax-exempt status should be included in the final rule.

2) Nondiscrimination provisions affecting rating rules - AHPs should be able to continue rate-setting at the employer-level, as is current practice. Failure to amend this in the final rule would inherently result in cross-subsidization and discourage the use and expansion of AHPs. Additionally, this would cause many employers rates to increase simply as a result of one or two high-cost employers within the AHP. Using one rate for all results in adverse selection, cripples the expansion of AHPs, creates unhealthy community rated/individual markets, and will work against the Administrations goal of providing affordability through AHPs. At a minimum, the department should grandfather existing plans.

3) Compliance with State Regulations - The proposal fails to require AHPs to comply with their local laws and rating regulations. This should be incorporated into the final rule. It is essential that each States insurance commissioner/officer has the ability and power to regulate the insurance market within the state.
Without this provision, carriers could avoid regulation and oversight, which would leave unhealthy adverse selection pools throughout the country.

4) AHP membership AHPs should have the right to set business rules as to what membership requirements are (including company size and/or structure). Associations should be allowed to determine if they include working owners (and spouses) and other characteristics of their membership (for example, industry limitations).

5) Effective date With any change comes uncertainty and with uncertainty comes increased prices. The effective date of this rule needs to be 2020 or later in order to allow enough time for insurance companies to react and adjust without artificially inflating prices (as we saw in abundance with the implementation of ACA). Lack of proper time would result in small businesses having even higher costs and insurance companies continuing to profit in the wake of change.

Association Health Plans can be a vehicle to expand quality and affordability of health care coverage as they have been in the State of Washington. However, the proposed rule would prevent this expansion from occurring and would lead to increased risk of fraud and abuse; lower quality benefits; adverse selection and ultimate deterioration of overall insurance markets.