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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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Submitter Information

Name: Peggy Vallejo

Address: 428 W. 21st Ave

Covington, 70433

Email: peggyvallejo@hotmail.com

Phone: 985-892-6855

General Comment

The Dept of Labor should approve the rule to expand access to affordable health coverage, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA.

Businesses such as the large number of solo attorneys in this country should be able to join together in an employer group or association that is treated as the "employer" sponsor of a single multiple-employer "employee welfare benefit plan" and "group health plan"

The regulation should modify the definition of "employer," by creating a more flexible "commonality of interest" test for

the employer members than the Department of Labor has previously so defined.

The regulation should continue to distinguish employment-based plans, the focal point of Title I of ERISA, from mere commercial insurance programs and administrative service arrangements marketed to employers.

The proposal should also permit working owners of an incorporated or unincorporated trade or business, including partners in a partnership, to elect to act as employers for purposes of participating in an employer group or association sponsoring a health plan and also to be treated as employees with respect to a trade, business or partnership for purposes of being covered by the employer group's or association's health plan.

The proposed regulation should broaden the criteria under ERISA section 3(5) for determining that solo attorneys or law firms may join together in an employer group or association that is treated as the "employer" sponsor of a single multiple-employer "employee welfare benefit plan" and "group health plan" as those terms are defined in Title I of ERISA.

The regulation should modify the definition of "employer," by creating a more flexible "commonality of interest" test for the employer members than the Department of Labor (DOL or Department) had adopted in sub-regulatory interpretive rulings under ERISA section 3(5).

Access to affordable health coverage should be expanded, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA.

The proposed regulation should affect such association health plans, health coverage under these health plans, groups and associations of employers sponsoring such plans, participants and beneficiaries with health coverage under these plans, health insurance issuers, and purchasers of health insurance not purchased through association health plans.

I urge the Department of Labor to approve the proposed rulemaking changes.