

March 5, 2018

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room N-5655, U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn: Definition of Employer - RIN 1210-AB85

Re: Comments to Proposed Regulations Regarding Definition of "Employer"

Dear Sir or Madam:

This firm represents employers who sponsor group health plans for the benefit of their employees and eligible spouses/dependents. We have reviewed the proposed regulations relating to the definition of "employer" set forth in 29 CFR § 2510.3-5 and request clarification on how other laws regulating group health plans would be applied to an Association Health Plan including:

- COBRA. To the extent an employer with less than 20 employees joins an AHP, would the small employer be subject to COBRA by virtue of its membership in the AHP?
- Medicare Secondary Payor. Similar to COBRA, to the extent an employer is exempt from compliance with the Medicare Secondary Payor law as a small employer, would it continue to maintain this exemption if it joined an AHP?
- Non-Discrimination Rules under IRC 105(h). For self-funded AHPs, who would be responsible for ensuring compliance with § 105(h) of the Internal Revenue Code- each individual employer with respect to their own employees or the AHP?
- Guaranteed Availability/Renewability. Could an insurer refuse to provide quotes or otherwise insure an AHP by virtue of its AHP status? Could an insurer refuse to allow an insured to move between AHPs that it insures?
- Penalties/Non-Compliance Ramifications. What are the ramifications to individual employer members of the AHP's non-compliance and when might individual employer members be penalized for the AHP's non-compliance? For

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example, if the AHP violates the non-discrimination provisions in the proposed rules, what are the ramifications to the AHP and its employer members?

Thank you for the opportunity to comment and request additional clarification.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.



Susan J. Freed