

March 6, 2018

ATTN: RIN 1210-AB85  
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 Under Section 3(5) of ERISA- Association Health Plans**

The National Association of Chemical Distributors (NACD) comprises nearly 450 members and affiliate companies that represent more than 85% of the chemical distribution capacity in the nation and 93% of the industry's gross revenue. Our members are businesses large and small that employ tens of thousands of workers across the country. NACD member companies are vital to the chemical supply chain, providing products to over 750,000 diverse companies such as aerospace, agriculture, cosmetics, detergents, electronics, automotive, plastics, paints and coatings, pharmaceuticals, food ingredients, water treatment, and more.

We are thankful the Department of Labor has taken the initial steps to allow national trade associations like NACD to offer health insurance to our members. On average, NACD members have fewer than 25 employees. The cost of health insurance for these small businesses has greatly increased over the last decade and accounts for a large portion of their operating costs. Allowing NACD's members to pool together across state lines to purchase health insurance will not only provide more choice for small businesses but will also greatly reduce costs and the administrative burden of providing insurance. Additionally, we appreciate that the department has included sole proprietors and working owners in its proposed rule, which will allow additional participation in an Association Health Plan (AHP).

That said, we have concerns that the proposed rule needs further clarity in key areas, particularly those related to state preemption, participation, and the tax treatment for employers who participate. Specifically, we are asking the department to answer the following questions in its final rule:

1. Will there be full federal preemption of state insurance law?

The proposed regulation needs further clarification in this regard. We believe the proposal as written may limit who may participate from our membership. If NACD's AHP does not meet a state's insurance regulations, then members in that state will be excluded from participating in the AHP. On the other hand, to ensure full participation across the states we may need to offer several plans, at different costs, in each state to comply with specific requirements. This is simply unfeasible and goes against the intent of the president's executive order. Therefore, we ask that the regulatory structure for AHPs in the final rule be clear and concise for those who elect to self-fund or fully insure. As such, full ERISA preemption should be granted to an AHP because the association would not be purchasing a plan in one single state but across the nation.

2. Who may participate in the AHP?

NACD comprises approximately 250 distributor members and 200 affiliated members. As paying members of NACD, several of these affiliated member companies, many of whom are strongly connected to the chemical distribution industry as customers or suppliers, may want to participate in the program we offer. We believe that having a broad definition of what constitutes a “member” of an association for the purposes of being eligible to participate in an AHP will increase participation in such plan.

3. What will be the tax treatment of health plans for employer members who participate in the AHP, particularly for pass-through entities and sole proprietors?

While we understand this is not within the jurisdiction of the Department of Labor, we believe providing clarity on how employer members will be treated under the rule can provide guidance to the Department of the Treasury on how they will tax the insurance provided by employers through the AHP.

Again, we appreciate the work being done at the department to expand health insurance choice for small businesses. We hope you will take these comments into consideration as you prepare the final rule. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric R. Byer". The signature is fluid and cursive, with a large initial "E" and "B".

Eric R. Byer  
President