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

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General Comment

The nondiscrimination rules proposed could have a chilling effect on the creation of association health plans, particularly those that are self-funded. A group or association of employers that self-fund their medical benefits through an "association health plan" which also is considered a MEWA, still retain their commonality of interest even if the contributions to the plan vary among employer groups. Each of the employers in the group is able to provide medical benefits to their employees at a lower cost than if they were participating in a fully insured plan.

As noted in the Supplementary Information, cross-subsidization is a concern - and it is not simply possible under the proposed nondiscrimination rules; rather, it is mandated.

Specifically, the proposed rule to prevent each employer group from being considered a group of similarly situated individuals should be revoked. Even though the employer groups are similar enough to warrant membership within an association, they are still different, and should have the ability to contribute toward premium in proportion to the risk provided to the group.