

February 16, 2024

The Honorable Lisa M. Gomez
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C., 20210

Suzanne Adelman
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C., 20210

Re: Notice of Proposed Rulemaking, Employee Benefits Security Administration, Department of Labor, Definition of Employer—Association Health Plans; 88 FR 87968 29 CFR 2510 RIN 1210-AC16 (12/20/2023)

Dear Assistant Secretary Gomez and Suzanne Adelman:

As a leading representative and advocate on behalf of America's 33 million small businesses, Small Business Majority writes to provide feedback on the proposed rule to rescind the Department of Labor's (DOL's) 2018 Association Health Plan Rule. Small Business Majority applauds DOL for its proposal, in collaboration with the Biden-Harris Administration, to rescind the previous Administration's 'Association Health Plan' (AHP) Rule, in order to address rising healthcare costs for America's small businesses and entrepreneurs. A rollback of the 2018 rule will enable policymakers to come back to the table to ensure that plans available to small employers are quality, affordable and cost effective for Main Street businesses and their employees.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enable us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities.

These comments reflect special considerations that we urge DOL to take in the final rule. We look forward to working with you to ensure small businesses have access to quality, affordable health plans that protect and prioritize the healthcare needs of small business employees nationwide.

Healthcare access is a top concern for small businesses in our network and the promise of AHPs has not delivered for small businesses who desperately want to provide coverage options for their employees.

In 2023, Small Business Majority [conducted a poll](#) of our network of more than 85,000 businesses, which found that the cost of healthcare and health insurance was a top concern for an overwhelming 69% of small businesses. Of the respondents in this survey, 71% stated that bringing down the cost of healthcare should be a top priority for government officials and policymakers at the federal, state, and local levels.

While we recognize that the expansion of AHPs was based on claims that this would drive down the cost of health insurance for small employers, these plans can only offer lower premiums by offering a lower standard of insurance and by cherry-picking small businesses with young, healthy workforces. Businesses

that employ older workers or workers with medical challenges will not find these plans to be beneficial in cost and in quality of care. Under the current rule, small businesses with a younger and/or healthier workforce may be inclined to purchase coverage through AHPs; however, this tradeoff causes the insurance market for small businesses to split into two—one for those with a healthy or young workforce and one for those with a workforce with more complex healthcare needs.

When healthier customers exit the small group market in large numbers, they create a risk imbalance that results in major premium spikes for small firms that remain in the small group market. Many employees who need robust healthcare services may eventually be priced out as a result. This leads to an uneven, inaccessible market that consists of plans that are too costly for businesses to offer their employees.

In addition to causing instability in the health insurance markets, AHPs offer fewer consumer safeguards when compared to plans in the small group market. AHPs do not have to comply with most ACA requirements, such as essential health benefits like maternity care, mental health services, or prescription coverage. While the 2018 regulations state that AHPs cannot overtly exclude businesses or employees based on pre-existing conditions, the rules allow for enough flexibility that AHPs can be designed in such a way to price out, or even exclude, those populations more likely to have existing health conditions.

The ACA provided quality, affordable health coverage to numerous small firms that once struggled to access health insurance. Prior to the enactment of the healthcare law, small businesses and their employees represented a disproportionate share of uninsured workers. While there was great potential to keep small businesses insured at a low cost, the 2018 rule allowed for the sale of cheap, low quality plans that do not comply with ACA in an attempt to undermine the 2010 healthcare law. We strongly believe that compliance with the ACA should not be averted through questionable regulatory decisions, such as the 2018 rule, causing the already high cost of health coverage to skyrocket for America's top job creators.

The DOL's rollback of the 2018 law provides a historic opening for reform in the healthcare marketplace that will benefit small businesses.

We again thank the DOL for its careful review of harmful provisions that weaken access to critical benefits that small businesses must offer to remain competitive in today's economy. The rollback of this rule provides an opportunity for the government to reevaluate healthcare options for small businesses. Small businesses must have access to affordable, quality coverage—this must be done in a way that avoids driving up costs in ACA-compliant markets and driving down quality in the “low-cost” market.

In closing, Small Business Majority is glad to see a rescission of harmful provisions that for years have allowed for the sale of plans that circumvents regulated markets, resulting in the sale of cheaper, but lower quality plans. We encourage DOL to provide options to ensure that small businesses and their employees do not lose their coverage and that alternatives can be made available for their use during this transition time, and we look forward to working with policymakers to provide better options for small businesses owners when seeking coverage for their families and their employees.

Should you have any questions or would like to discuss our feedback further, please contact our Government Affairs Director, Alexis D'Amato at adamato@smallbusinessmajority.org or (202) 967-0995.

Sincerely,



John Arensmeyer
Founder & CEO
Small Business Majority