



**February 20, 2024**

The Honorable Julie Su  
Secretary, Department of Labor

The Honorable Lisa M. Gomez  
Assistant Secretary, Employee Benefits Security Administration

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

Attention: Proposed Rescission of AHP Final Rule RIN 1210-AC16

Dear Secretary Su and Assistant Secretary Gomez:

Thank you for the opportunity to comment on the proposed regulation rescinding the 2018 rule on Association Health Plans (AHPs) issued by the Department of Labor (DOL) December 20, 2023. While the American Bankers Association (ABA) does not currently offer its member banks health insurance, state bankers associations across the country have long offered health and other insurance products as member benefits to their state bank members.

Our comments are in support of these state-based health insurance arrangements, the thousands of banks they serve and the tens of thousands of bank employees who have health insurance because of them.

Providing health insurance benefits to employees is not getting easier for employers and banks are no exception. Costs have been rising for some time and inflation has only exacerbated that problem. The Kaiser Family Foundation 2023 benchmark Employer Health Benefits Survey found that family premiums for employer coverage rose 7% to nearly \$24,000 per year.<sup>1</sup>

Compare the increase in health insurance costs KFF found to the 2023 rise in real wages the Bureau of Labor Statistics (BLS) noted in its February 13, 2024 release – just 0.3%.

---

<sup>1</sup> KFF 2023 Employer Health Benefits Survey: <https://www.kff.org/health-costs/report/2023-employer-health-benefits-survey/>

Family health insurance premium increases rose 23 times faster than wages in just 12 months.<sup>2</sup>

Accordingly, state bankers associations and the insurance trusts they operate are exquisitely sensitive to changing regulatory environments as a source of health insurance cost increases. Importantly, while neither the ABA nor state bankers associations advocated for the expansion of the definition of “employer” under section 3(5) of the Employee Retirement Income Security Act of 1974 (ERISA), the 2018 expansion **did not** undermine the integrity of pre-rule sub-regulatory guidance relating to “Pathway 1” industry-based, multiple employer welfare arrangements (MEWAs), a result we strongly supported.

However, it now appears the DOL’s proposed regulation rescinding the 2018 rule may also change the very sub-regulatory guidance relating to “Pathway 1” state sponsored insurance trusts rely upon to manage their health plans, an outcome we vigorously oppose.

Specifically, the proposed regulation states:

*In addition to the comments on rescission of the 2018 AHP Rule, the Department also seeks comments on whether the Department should propose a rule for group health plans that codifies and replaces the pre-rule guidance, issues additional guidance clarifying the application of the Department’s pre-rule guidance as it relates to group health plans (including for example, the HIPAA nondiscrimination rules applicable to AHPs – italics added).*

The pre-rule guidance at issue is a mature set of rules spanning decades. Because the guidance is mature, there are some inconsistencies; for example, in 2001, the DOL’s advisory opinion to the Wisconsin Automobile and Truck Dealers Association, Inc. Insurance Trust (“Trust”)<sup>3</sup> concluded that the Trust is a single employer welfare benefit plan maintained by a “*bona fide* employer group or association” within the meaning of section 3(5) of ERISA.

Sixteen years later, the DOL issued an Advisory Opinion approving a “Pathway 1” MEWA established through the creation of a consortium.<sup>4</sup> While Advisory Opinion 2017-02AC does not specifically opine that all “Pathway 1” MEWAs must be established through a consortium, we are aware that the DOL previously threatened MEWAs established by trusts with substantial penalties under ERISA unless they restructured to be sponsored by consortia.

Any review of Form M-1 filings will reveal that more than two hundred MEWAs filing Form M-1 in 2022 include the term “trust” in the name of the MEWA. One could be forgiven for

---

<sup>2</sup> BLS Real Earnings Summary: <https://www.bls.gov/news.release/realer.nr0.htm>

<sup>3</sup> DOL Advisory Opinion 2001-04A.

<sup>4</sup> DOL Advisory Opinion 2017-02AC.

concluding that a large percentage of MEWAs are, therefore, sponsored by trusts, not consortia. If the DOL elects to revise “Pathway 1” guidance, we respectfully request that the structure of existing MEWAs, set up in good faith in accordance with prior DOL advisory opinions, be allowed to remain as trusts.

In addition, most “Pathway 1” MEWAs utilize experience rating in their health plans. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)<sup>5</sup> nondiscrimination rules allow plans to treat employees as distinct groups of similarly situated individuals, as long as the distinction is based on a *bona fide* employment-based classification consistent with the employer’s usual business practice.

Specifically, the regulations list the following classifications as those that may reflect *bona fide* business practices: (a) an employee’s full-time versus part-time status; (b) different geographic location; (c) membership in a collective bargaining agreement; (d) date of hire; (e) length of service; (f) status as a current employee versus former employee; and, (g) different occupations.<sup>6</sup>

MEWAs, which include unrelated employers often located in different geographic locations, have relied on the HIPAA nondiscrimination rules to experience rate groups for decades. These practices should be allowed to continue. If not, a prohibition or restriction on experience rating will likely result in significant cost increases for the thousands of employers throughout the United States that currently participate in MEWAs, an outcome the DOL should seek to avoid.

MEWAs, especially those established as insurance trusts by state bankers associations, provide affordable, comprehensive medical coverage to the millions of Americans who work in our nation’s financial institutions. They must not be harmed by this or any other rulemaking.

Accordingly we respectfully request that the DOL support industry-based MEWAs by preserving existing pre-rule guidance, clarify that trust arrangements continue to be permissible methods of establishing Pathway 1 MEWAs and lastly, that use of experience rating will not be impaired.

I look forward to your response and would be happy to answer any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "JVA McKeachie". The signature is written in a cursive, somewhat stylized font.

SVP and Executive Director

---

<sup>5</sup> Public Law 104-191

<sup>6</sup> Treasury Reg. § 54.9802-1(d).