

Congress of the United States
Washington, DC 20515

February 2, 2018

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Secretary Acosta:

As members of the Education and the Workforce Committee, we write to express our concerns with the Department of Labor's recent Notice of Proposed Rulemaking (NPRM) regarding Association Health Plans (AHPs) and the accompanying Regulatory Impact Analysis. As our Committee has jurisdiction over the Employee Retirement Income Security Act (ERISA), we seek further clarification and detail regarding the potential impacts of the proposed rule and how these impacts were determined.

As you know, an impact analysis is intended to assess a regulation's likelihood of achieving its stated objectives. You have stated that the objective of this regulation is to "expand employer and employee access to more affordable, high-quality coverage," a goal that we share. However, we are concerned that the impact analysis fails to explain sufficiently how the Department expects this proposed rule to achieve the desired outcome. For that reason, we respectfully request specific additional information on how the Department has determined this proposed rule's potential impacts on coverage quality and cost – from the perspective of employers and employees.

First, section 1.5 of the Regulatory Impact Analysis discusses the possible impact the NPRM would have the adequacy of benefits and the cost of coverage offered by AHPs. The Department asserts that AHPs could offer small businesses more affordable choices than are currently available in the regulated markets. However, there is little clarity on how the analysis is measuring affordability or how many small businesses will see reduced costs. Has the Department taken into account the number of medical bankruptcies experienced by AHP members or long-term affordability?

Additionally, section 1.6 discusses the potential impact of the proposed rule on risk pooling. It states that the Department considered "a range of evidence" and concludes that concerns about adverse selection in the small group markets are "speculative". Can this range of evidence be shared with our Committee, specifically to elucidate how the Department determined concerns about deteriorating risk pools could be dismissed?

Further, section 1.10 discusses solvency risks associated with AHPs, outlining the existing reporting requirements imposed on multiple employer welfare arrangements (MEWAs) and the provisions under the proposed rule that require formal organizational structure to protect the interests of participating employees. The section nonetheless concludes that "the flexibility

afforded AHPs under this proposal could introduce more opportunities for mismanagement or abuse.” We share the concern that this proposed rule could introduce rampant fraud and abuse – undermining reforms made to ERISA that ensured both states and the federal government had oversight of AHPs in response to widespread abuses by fraudulent AHPs. Can the Department provide us more specifics with regard to what components of the NPRM enhance these aforementioned risks? Further, what types of mismanagement or abuse does the Department expect could occur as a result of the proposal?

Lastly, section 1.10 also asserts that the Department’s review of MEWA annual filings found that “nearly none” of these entities were out of compliance with ERISA’s minimum health plan standards and that only 13% were out of compliance with the trust requirement. Can the Department provide any information about oversight activities conducted by the Department to determine the accuracy of MEWA form filings? For example, how many audits were conducted and what enforcement actions were taken by the Department as a result of these oversight activities? Did the Department conduct any other oversight activities to ensure compliance with ERISA, similar to market conduct exams and form review processes conducted by state insurance departments?

Due to the fact that comments are due on the proposed regulation by March 6, 2018, we respectfully request a response to this letter by February 16th. Thank you for your attention to this request.

Sincerely,



JOE COURTNEY
Member of Congress



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