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March 5, 2018

Via Regulations.gov

Ms. Elizabeth Schumacher
Office of Health Plan Standards & Compliance Assistance
Employee Benefits Security Administration
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 – EBSA-2018-0001-0001

Dear Ms. Schumacher:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) appreciates this opportunity to comment¹ on the Employee Benefits Security Administration’s (“EBSA”) “Definition of Employer Under Section 3(5) of ERISA – Association Health Plans” (“AHPs”) proposed rule. EBSA proposes to augment the definition of “employer” under the Employee Retirement Income Security Act (“ERISA”) to make it less onerous to form and utilize AHPs. ILMA supports EBSA’s efforts to broaden the availability of health care options to contain insurance costs. The Association urges EBSA to finalize the rule with the modifications and clarifications below.

Introduction to ILMA

ILMA is a national-501 (c)(6) trade association² with 350 member companies that is headquartered in Alexandria, Virginia. ILMA’s manufacturing members blend, compound, and sell over 25 percent of the United States’ lubricant needs (*e.g.*, passenger car motor oils, gear oils, and hydraulic fluids) and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. The overwhelming majority of ILMA’s manufacturing members are “small businesses” based on the Small Business Administration’s size standards. ILMA members, as manufacturers, are classified at NAICS 324191.

Independent lubricant manufacturers are neither owned nor controlled by the companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives.

¹ ILMA also aligns with and supports the comments submitted by the National Association of Manufacturers (“NAM”). ILMA is a member of NAM’s Council of Manufacturing Associations.

² Separately, ILMA established the Independent Lubricant Manufacturers Association Foundation – a 501 (c)(3) organization.

Base oils are purchased from refiners and re-refiners, who are also direct competitors in the sale of finished products. Additives are purchased from suppliers, who also may be direct competitors in the sale of finished products. ILMA members succeed over their suppliers/competitors by manufacturing and distributing high-quality, often specialized, lubricants accompanied by localized, allied services to their customers.

Lubricants are essential to the U.S. economy. Americans cannot get to work without the engine oils, transmission fluids and other automotive lubricants in their vehicles. Manufacturers cannot operate most of their machinery without industrial oils and hydraulic fluids. MWFs are used to bend, shape or cut metal for the production or fabrication of automobiles, military equipment, airplanes, medical devices and thousands of other products. ILMA members' products are vital to the economic freedom and prosperity enjoyed by the U.S.

The Proposal Offers A Common-Sense Option for Smaller Employers

Many ILMA Manufacturing Members, as stated above, are small businesses within the SBA's definition and also fall below the 50-employee threshold to be deemed an "applicable large employer" under the Affordable Care Act ("ACA"). ILMA annually conducts a survey of its membership to gauge policy priorities for the upcoming year, resulting in health care consistently being one of the issues of greatest concern. Simply, the Association's members want to be able to provide quality health insurance as an employee benefit to attract and retain top-level talent; however, the cost to do so has become increasingly unmanageable. As President Trump stated in his Executive Order,³ ("EO"), "large employers often are able to obtain better terms on health insurance for their employees than small employers because of their larger pools of insurable individuals across which they spread risk and administrative costs." ILMA agrees with the president's sentiment⁴ and has heard repeatedly from member companies that it is difficult to find reasonably priced health insurance plans in the open market for small companies. EBSA's proposal would allow small businesses, sole proprietors and other self-employed individuals to join together to form groups across state lines and purchase insurance in the market, reducing costs through risk sharing⁵ amongst a larger group.

The proposed rule would reduce the requirements of what must be contained in a new health plan. Under the ACA, every insurance plan⁶ must offer ten essential benefits including those for addiction and mental health, prescription drugs, and maternity care. By reducing the mandates of what plans must contain, the proposed rule will allow groups to craft plans that are appropriately tailored to their needs, which should lower the cost and incentivize their creation⁷. Further, trade

³ See President Trump's Executive Order "Promoting Healthcare Choice and Competition Across the United States" (Issued October 12, 2017).

⁴ The Association's members regularly convey that they must contend with an uneven playing field, attempting to recruit prospective employees against larger employers with potentially "richer" benefits packages. This regulation, if finalized, would assist smaller employers compete against their larger counterparts.

⁵ ILMA has long advocated for health plans that could be purchased across state lines.

⁶ Individual and small group markets must provide the minimum, essential benefits.

⁷ Indeed, DOL advocates for that position in the proposed rule, "[It] may prompt some working owners who were previously uninsured and some small businesses that did not previously offer insurance to their employees to enroll in AHPs and similarly prompt some small businesses with insured health plans to switch to AHPs."

associations are uniquely attuned to the needs of their membership and have the greatest ability to craft health insurance benefits to the requirements of the specific industry sector they represent.

The Scope of Preemption Must Clarified

The core of the AHP proposal is to allow similarly-situated individuals and organizations to band together to purchase health insurance on more favorable terms given the increase in bargaining power. Those entities are not required to be confined to a particular jurisdiction. In ILMA's circumstance, the Association represents companies in nearly every state. Unless EBSA more clearly articulates that states are preempted from imposing their own regulations on AHPs, it seems unlikely that any membership organization could functionally operate an AHP if it had to navigate a "patchwork" of state rules that may directly conflict with one another.

AHPs are considered to be multi-employer welfare arrangements ("MEWAs"), subject to state regulation. States have historically had authority to regulate insurance products to ensure their adequacy, and their interest to do so with AHPs is understandable. However, the imposition of a potential multitude of varying state-based requirements would render AHPs meaningless because no entity could reasonably administer one. EBSA must strike the right balance for states to monitor the activities of AHPs to protect consumers against the necessity of uniformity for industry groups to practically administer one. ILMA would encourage EBSA to provide more clarity on that aspect of the regulation in the final rule.

EBSA Must Prevent Bad Actors from Administering AHPs

EBSA also must balance the necessity of regulatory uniformity against the potential of bad actors attempting to craft undercapitalized or "junk" AHPs. Particularly for newly-formed entities that were created for the express purpose of forming an AHP, there should be an appropriate level of scrutiny. ILMA does not believe the same level of scrutiny however should be applied to membership-driven trade associations. Simply, the value proposition offered to the membership would be irreparably harmed if those trade associations offered "junk" plans to their member companies. For long-standing associations, such as ILMA, offering an AHP would merely be an ancillary benefit offered to the membership, not a central tenet of its existence. That reality would prevent those associations from considering formation of an AHP that offered sub-standard benefits or that was not sufficiently capitalized.

However, the same may not be said for organizations that may spring up "overnight" to form an AHP that do not have the same symbiotic relationship with its members. As such, it may be appropriate for EBSA to more specifically define organizations that have a sufficient history and assets to provide a minimum level of certainty to participating companies and individuals. This will ensure that the general public is protected from "bad actors" and that legitimate associations can offer AHPs as a benefit of membership without the looming concern of a potential nefarious entity ruining the reputation of AHPs through fraudulent or other deceptive practices.

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Conclusion

ILMA supports EBSA's proposed rule and requests that the regulation be finalized, incorporating the recommendations above to allow for greater health care access and options for small businesses and their employees.

Sincerely,

A handwritten signature in black ink that reads "Holly Alfano". The signature is written in a cursive, flowing style.

Holly Alfano
CEO

CC: ILMA Board of Directors
Jeffrey L. Leiter, Esq.
Daniel T. Bryant, Esq.