March 15, 2024

The Honorable Virginia Foxx
Chair
U.S. House Committee on Education and the Workforce
2462 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
U.S. House Committee on Education and the Workforce
2328 Rayburn House Office Building
Washington, DC 20515

RE: Request for Information – ERISA's 50th Anniversary: Reforms to increase affordability and quality in employer-sponsored health coverage

Dear Chair Foxx, Ranking Member Scott and members of the House Committee on Education and the Workforce:

As a leading representative and advocate of America's 33.3 million small businesses, Small Business Majority writes to provide comments on the Committee's Request for Information (RFI) regarding ways to strengthen and clarify the Employee Retirement Income Security Act (ERISA).

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.

Access to affordable, quality healthcare is critical for every American – according to the latest available data from the Bureau of Labor Statistics over 47% of workers received healthcare benefits through their employer. However, many small employers continue to struggle to find affordable healthcare plans for their employees due to rising healthcare costs, complicated enrollment processes, and burdensome administrative requirements. This year, Small Business Majority conducted a poll of small business owners nationwide, which found that the cost of health insurance premiums, deductibles and other key costs have increased in the past few years.[1] While the health coverage of nearly 100 million employees and family members fall under ERISA regulations, we appreciate the opportunity to provide our feedback on how ERISA is impacting small businesses efforts to provide quality, affordable healthcare to their employees.

ERISA preemptions are appropriate for large multi-state employers, but not for small businesses who operate in one state.

In its nearly 50-year existence, ERISA has proved valuable to large, multi-state employers in offering uniform healthcare plan coverage to their employees. We agree that these multi-state employers need health plan options, such as those regulated under ERISA, to avoid the complexities of complying with

[1] 78% cited that insurance premiums have increased, 57% cited an increase in deductibles, 60% saw an increase in copays and drug copays, and 59% saw an increase in the cost of hospital visits.

multiple state healthcare laws and regulations. However, most our nation's small businesses only operate out of one state, and also have few employees. As a result, small businesses often buy into small-group health insurance plans that are regulated at the state level rather than through ERISA.

Larger corporations, which often have thousands of employees nationwide, are able to self-fund their health plans due to the size of their employee population, offering employees plans that are regulated under ERISA. For small businesses, however, self-funding arrangements are not practical or economical with such low employee counts. About 90% of small businesses have fewer than 20 workers, which is much too small to make self-funding a viable option.

However, each state has a small group market (generally for businesses with fewer than 50 workers) to meet the needs of these small firms. These small group plans are generally regulated under the Affordable Care Act (ACA) and additional state regulations. Together, these important federal and state regulations ensure insurance products must meet certain standards and include basic benefits such as maternity care, mental health services, or prescription coverage, which allow small businesses to access quality healthcare coverage for their employees.

In the last few years, we have seen an increase in companies using ERISA preemption laws as a means to sell small businesses coverage that does not comply with the ACA or state small group market rules. These plans, which could include Association Health Plans (AHPs), are often marketed towards small businesses with younger and healthier workforces. This 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. As small businesses with younger and healthier workforces are pulled out of small group, ACA-compliant coverage plans, this can result in major premium spikes for small firms that remain in the small group market. As we stated in our recent comments to the Department of Labor, we appreciate the Biden Administration's efforts to roll back regulations from the previous administration which encouraged the sale of small business plans that do not comply with the ACA and state regulations.

State regulations are not the primary cause of high healthcare costs, but rather are a result of corporate consolidation and anti-competitive business practices.

We are pleased to see the Committee on Education and the Workforce examine the challenges and opportunities relating to ERISA reforms. However, we underscore that state regulations and the ACA provide important protections for small businesses in particular. Without these protection in place, small business owners, who are not healthcare experts and do not typically have human-resource personnel or healthcare benefits administrators to assist them in purchasing coverage, could be sold plans that are low-quality, insolvent and/or unaffordable. While preemption from these requirements makes sense for large companies, these regulations are providing important protections for small businesses.

What we see as a primary driver of high healthcare costs for small and large businesses alike is the dramatic corporate consolidation among healthcare providers and the anti-competitive business practices that many are employing. We applaud the Committee's work in 2023 in drafting the Lower Costs, More Transparency Act, which would require more transparency of hospital pricing and end some of the most abusive billing practices.

Can employers enter multiple employer welfare arrangements (MEWA) or similar risk-sharing models to help decrease the cost of high-cost specialty drugs?

While we encourage risk sharing models to decrease the cost of specialty drugs, we urge caution against targeting our nation's smallest employers as good candidates for MEWA plans. Research and other evidence exists to demonstrate that MEWAs are sometimes utilized by fraudulent and bad actors that promise lower costs to vulnerable (specifically small) employers. Small Business Majority supports efforts to crack down on fraud and abusive practices relating to the implementation of MEWA care options, and we urge the Committee to consider legislation that would implement guardrails for MEWA providers. While some individual small businesses may be able to save money in a MEWA arrangement, we are concerned about plans that take healthy risk out of the small group market, turning the small group market into a high-risk pool.

The Committee broadly seeks feedback on the use of medical loss ratio (MLR) requirements and whether limiting MLR requirements may increase insurers' incentives to reduce health care spending for plans.

MLRs were implemented as part of the ACA and are designed to lower administrative and marketing costs by increasing transparency requirements for insurers and implementing rebate policies to consumers for companies that were not in compliance with the transparency standards. Medical Loss Ratios (MLRs), when working correctly, may reduce consumer spending by incentivizing the insurer to lower administrative costs, thus reducing costs at the consumer level. However, MLRs must be strictly enforced so that companies are held accountable to lowering costs for health plans. Small Business Majority encourages the Committee to conduct a review of MLR compliance to ensure that insurers are working in good faith to adhere to MLR standards with the overall goal of keeping prices lower for consumers. We encourage a special emphasis on the impact of small businesses and would strongly advise that MLRs be maintained and strengthened to ensure that strong guardrails remain in place to help keep prices from increasing at unstable rates.

In closing, we thank the Committee for its attention to examining regulatory structures governing access to healthcare options and plans. As advocates on behalf of America's small business community, it is critical that the perspective of our nation's smallest employers is considered when proposing reforms to ERISA or other health regulatory bodies. Therefore, we look forward to working with you on this important issue and would welcome any questions that you may have to discuss this further. Should you have any questions or would like to discuss our feedback, please contact our Government Affairs Director Alexis D'Amato at adamato@smallbusinessmajority.org or call at (202) 967-0995.

Sincerely,

John Arensmeyer
Founder & CEO
Small Business Majority

CC: Members of the House Committee on Education and the Workforce