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More Guidance in Favor of Association Health Plans

In June, the Department of Labor issued a final rule that allowed the expansion of Association Health Plans (AHPs). The final rule revised the definition of who can qualify as an "employer" under ERISA and loosened the criteria for what constitutes a bona fide group or association of employers that can establish an employee welfare benefit plan. The final rule allows unrelated small employers and the self-employed to band together for the purpose of purchasing health coverage. See our prior Blog post here.

Since the DOL issued the final rule, some groups have questioned whether the employer shared responsibility rules should apply to AHPs. That question has now been resolved in favor of AHPs in new IRS guidance. The IRS recently added new Question 18 to its Q/A on the Affordable Care Act found here. This new question and answer provides guidance on whether the employer shared responsibility rules apply if an employer that is not otherwise an ALE becomes subject to these rules by offering coverage through an Association Health Plan. Not surprisingly, the response is "no." But, the reason the response is "no" is that Code Section 4980H and the final implementing regulations are very clear on this issue. An entity is an ALE solely if the number of its employees, combined with the employees of other members of its group which are treated as a single employer under Code Sections 414(b), (c), (m) or (o) (generally, its controlled group) render it an ALE. Other participating entities in the AHP will not affect ALE status unless those other participating entities are already within the employer's controlled group.