

# LEGAL UPDATE

## DOL Proposes Rescinding Final Rule on Association Health Plans

On Dec. 19, 2023, the Department of Labor (DOL) released a [proposed rule](#) that would rescind in full a [final rule](#) it released in 2018 on association health plans (AHPs). According to the DOL, its proposal is intended to support critical health care protections for consumers under the Affordable Care Act (ACA) and resolve any uncertainty surrounding the final rule.

### AHPs—Single ERISA Plans

An AHP is a type of ERISA-covered group health plan sponsored by a group or association of employers (instead of a single employer) to provide health coverage to employees of the AHP's employer members. When an AHP is treated as a single ERISA plan, all employees covered by the plan are considered when determining the insurance market rules (that is, small group or large group) that apply to the plan. This allows small businesses to join together and enjoy many of the regulatory and negotiating advantages that large employers experience. For example, coverage in the large group market is not subject to the ACA's reforms regarding premium rating restrictions and coverage of essential health benefits items and services, such as maternity and newborn care.

The DOL has released a series of advisory opinions that establish a narrow pathway for an AHP to qualify as a single ERISA plan (e.g., [DOL Advisory Opinion 2008-07A](#)). The DOL applies a facts and circumstances approach to determine whether a group or association of employers is a bona fide employer group or association capable of sponsoring an ERISA plan on behalf of its employer members.

### Final Rule

The final rule from 2018 would have made it easier for an AHP to be considered a single ERISA plan. However, on March 28, 2019, a federal district court [vacated](#) key portions of the final rule. The court specifically ruled that the DOL's expansion of the term "employer" to include associations of disparate employers and working owners without employees was an unreasonable interpretation of ERISA. Due to this ruling, the 2018 final rule was never fully implemented, and the DOL is not aware of any existing AHP formed based on the final rule.

The DOL has now proposed rescinding the 2018 final rule in its entirety. According to the DOL, this will resolve any uncertainty regarding the final rule's guidance, allow for a reexamination of the criteria for forming an AHP that is a single ERISA plan and ensure that guidance is consistent with ERISA. The proposed rule has a 60-day period for submitting comments.



## HIGHLIGHTS

- DOL guidance allows certain bona fide employer groups or associations to maintain single ERISA plans.
- An AHP that is considered a single ERISA plan can avoid certain ACA reforms.
- A final rule from 2018 would have made it easier for unrelated employers to form single ERISA plans.
- Key portions of this final rule were vacated by a court ruling in 2019 as being inconsistent with ERISA.
- The DOL has proposed rescinding the final rule to support the ACA's protections and resolve any uncertainty on AHPs.