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115TH CONGRESS
1ST SESSION

H. R. 1101

[Report No. 115-43]

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. SAM JOHNSON of Texas (for himself and Mr. WALBERG) introduced the following bill; which was referred to the Committee on Education and the Workforce

MARCH 17, 2017

Additional sponsors: Ms. STEFANIK, Mr. MITCHELL, Mr. STIVERS, Mr. FASO, Mr. BISHOP of Michigan, Mr. ROE of Tennessee, Mr. HUIZENGA, Ms. JENKINS of Kansas, Mr. ROKITA, Mr. ALLEN, Mr. GUTHRIE, Mr. SESSIONS, Mrs. WALORSKI, Mr. BOST, Mr. HENSARLING, Mr. WILSON of South Carolina, Mr. WEBER of Texas, Mr. PITTINGER, Mr. FLORES, Mr. CHABOT, Mr. ROUZER, Mr. HUNTER, Mr. FERGUSON, Mr. GROTHMAN, Mrs. RADEWAGEN, Mr. SMITH of Missouri, Mr. BYRNE, Mr. MESSER, Mr. DUNCAN of South Carolina, Mr. HULTGREN, Mr. MCCAUL, Mr. BILIRAKIS, Mr. SMUCKER, Mr. BARLETTA, Mr. TROTT, and Mr. CRAMER

MARCH 17, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 2017]

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

1 *purpose and providing for periodic meetings on at*
2 *least an annual basis, as a bona fide trade associa-*
3 *tion, a bona fide industry association (including a*
4 *rural electric cooperative association or a rural tele-*
5 *phone cooperative association), a bona fide profes-*
6 *sional association, or a bona fide chamber of com-*
7 *merce (or similar bona fide business association, in-*
8 *cluding a corporation or similar organization that*
9 *operates on a cooperative basis (within the meaning*
10 *of section 1381 of the Internal Revenue Code of*
11 *1986)), for substantial purposes other than that of ob-*
12 *taining or providing medical care;*

13 *“(2) is established as a permanent entity which*
14 *receives the active support of its members and re-*
15 *quires for membership payment on a periodic basis of*
16 *dues or payments necessary to maintain eligibility*
17 *for membership in the sponsor; and*

18 *“(3) does not condition membership, such dues or*
19 *payments, or coverage under the plan on the basis of*
20 *health status-related factors with respect to the em-*
21 *ployees of its members (or affiliated members), or the*
22 *dependents of such employees, and does not condition*
23 *such dues or payments on the basis of group health*
24 *plan participation.*

1 *Any sponsor consisting of an association of entities which*
2 *meet the requirements of paragraphs (1), (2), and (3) shall*
3 *be deemed to be a sponsor described in this subsection.*

4 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
5 **PLANS.**

6 *“(a) IN GENERAL.—The applicable authority shall*
7 *prescribe by regulation a procedure under which, subject to*
8 *subsection (b), the applicable authority shall certify associa-*
9 *tion health plans which apply for certification as meeting*
10 *the requirements of this part.*

11 *“(b) STANDARDS.—Under the procedure prescribed*
12 *pursuant to subsection (a), in the case of an association*
13 *health plan that provides at least one benefit option which*
14 *does not consist of health insurance coverage, the applicable*
15 *authority shall certify such plan as meeting the require-*
16 *ments of this part only if the applicable authority is satis-*
17 *fied that the applicable requirements of this part are met*
18 *(or, upon the date on which the plan is to commence oper-*
19 *ations, will be met) with respect to the plan.*

20 *“(c) REQUIREMENTS APPLICABLE TO CERTIFIED*
21 *PLANS.—An association health plan with respect to which*
22 *certification under this part is in effect shall meet the appli-*
23 *cable requirements of this part, effective on the date of cer-*
24 *tification (or, if later, on the date on which the plan is*
25 *to commence operations).*

1 “(d) *REQUIREMENTS FOR CONTINUED CERTIFI-*
2 *CATION.—The applicable authority may provide by regula-*
3 *tion for continued certification of association health plans*
4 *under this part.*

5 “(e) *CLASS CERTIFICATION FOR FULLY INSURED*
6 *PLANS.—The applicable authority shall establish a class*
7 *certification procedure for association health plans under*
8 *which all benefits consist of health insurance coverage.*
9 *Under such procedure, the applicable authority shall pro-*
10 *vide for the granting of certification under this part to the*
11 *plans in each class of such association health plans upon*
12 *appropriate filing under such procedure in connection with*
13 *plans in such class and payment of the prescribed fee under*
14 *section 807(a).*

15 “(f) *CERTIFICATION OF SELF-INSURED ASSOCIATION*
16 *HEALTH PLANS.—An association health plan which offers*
17 *one or more benefit options which do not consist of health*
18 *insurance coverage may be certified under this part only*
19 *if such plan consists of any of the following:*

20 “(1) *A plan which offered such coverage on the*
21 *date of the enactment of the Small Business Health*
22 *Fairness Act of 2017.*

23 “(2) *A plan under which the sponsor does not re-*
24 *strict membership to one or more trades and busi-*
25 *nesses or industries and whose eligible participating*

1 *employers represent a broad cross-section of trades*
2 *and businesses or industries.*

3 *“(3) A plan whose eligible participating employ-*
4 *ers represent one or more trades or businesses, or one*
5 *or more industries, consisting of any of the following:*
6 *agriculture; equipment and automobile dealerships;*
7 *barbering and cosmetology; certified public account-*
8 *ing practices; child care; construction; dance, theat-*
9 *rical and orchestra productions; disinfecting and pest*
10 *control; financial services; fishing; food service estab-*
11 *lishments; hospitals; labor organizations; logging;*
12 *manufacturing (metals); mining; medical and dental*
13 *practices; medical laboratories; professional consulting*
14 *services; sanitary services; transportation (local and*
15 *freight); warehousing; wholesaling/distributing; or*
16 *any other trade or business or industry which has*
17 *been indicated as having average or above-average*
18 *risk or health claims experience by reason of State*
19 *rate filings, denials of coverage, proposed premium*
20 *rate levels, or other means demonstrated by such plan*
21 *in accordance with regulations.*

22 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
23 **BOARDS OF TRUSTEES.**

24 *“(a) SPONSOR.—The requirements of this subsection*
25 *are met with respect to an association health plan if the*

1 *sponsor has met (or is deemed under this part to have met)*
2 *the requirements of section 801(b) for a continuous period*
3 *of not less than 3 years ending with the date of the applica-*
4 *tion for certification under this part.*

5 “(b) *BOARD OF TRUSTEES.—The requirements of this*
6 *subsection are met with respect to an association health*
7 *plan if the following requirements are met:*

8 “(1) *FISCAL CONTROL.—The plan is operated,*
9 *pursuant to a trust agreement, by a board of trustees*
10 *which has complete fiscal control over the plan and*
11 *which is responsible for all operations of the plan.*

12 “(2) *RULES OF OPERATION AND FINANCIAL CON-*
13 *TROLS.—The board of trustees has in effect rules of*
14 *operation and financial controls, based on a 3-year*
15 *plan of operation, adequate to carry out the terms of*
16 *the plan and to meet all requirements of this title ap-*
17 *plicable to the plan.*

18 “(3) *RULES GOVERNING RELATIONSHIP TO PAR-*
19 *TICIPATING EMPLOYERS AND TO CONTRACTORS.—*

20 “(A) *BOARD MEMBERSHIP.—*

21 “(i) *IN GENERAL.—Except as provided*
22 *in clauses (ii) and (iii), the members of the*
23 *board of trustees are individuals selected*
24 *from individuals who are the owners, offi-*
25 *cers, directors, or employees of the partici-*

1 *participating employers or who are partners in the*
2 *participating employers and actively par-*
3 *ticipate in the business.*

4 “(ii) *LIMITATION.—*

5 “(I) *GENERAL RULE.—Except as*
6 *provided in subclauses (II) and (III),*
7 *no such member is an owner, officer,*
8 *director, or employee of, or partner in,*
9 *a contract administrator or other serv-*
10 *ice provider to the plan.*

11 “(II) *LIMITED EXCEPTION FOR*
12 *PROVIDERS OF SERVICES SOLELY ON*
13 *BEHALF OF THE SPONSOR.—Officers or*
14 *employees of a sponsor which is a serv-*
15 *ice provider (other than a contract ad-*
16 *ministrator) to the plan may be mem-*
17 *bers of the board if they constitute not*
18 *more than 25 percent of the member-*
19 *ship of the board and they do not pro-*
20 *vide services to the plan other than on*
21 *behalf of the sponsor.*

22 “(III) *TREATMENT OF PROVIDERS*
23 *OF MEDICAL CARE.—In the case of a*
24 *sponsor which is an association whose*
25 *membership consists primarily of pro-*

1 *viders of medical care, subclause (I)*
2 *shall not apply in the case of any serv-*
3 *ice provider described in subclause (I)*
4 *who is a provider of medical care*
5 *under the plan.*

6 *“(iii) CERTAIN PLANS EXCLUDED.—*
7 *Clause (i) shall not apply to an association*
8 *health plan which is in existence on the*
9 *date of the enactment of the Small Business*
10 *Health Fairness Act of 2017.*

11 *“(B) SOLE AUTHORITY.—The board has sole*
12 *authority under the plan to approve applications*
13 *for participation in the plan and to contract*
14 *with a service provider to administer the day-to-*
15 *day affairs of the plan.*

16 *“(c) TREATMENT OF FRANCHISE NETWORKS.—In the*
17 *case of a group health plan which is established and main-*
18 *tained by a franchiser for a franchise network consisting*
19 *of its franchisees—*

20 *“(1) the requirements of subsection (a) and sec-*
21 *tion 801(a) shall be deemed met if such requirements*
22 *would otherwise be met if the franchiser were deemed*
23 *to be the sponsor referred to in section 801(b), such*
24 *network were deemed to be an association described in*
25 *section 801(b), and each franchisee were deemed to be*

1 *a member (of the association and the sponsor) referred*
2 *to in section 801(b); and*

3 “(2) the requirements of section 804(a)(1) shall
4 *be deemed met.*

5 *The Secretary may by regulation define for purposes of this*
6 *subsection the terms ‘franchiser’, ‘franchise network’, and*
7 *‘franchisee’.*

8 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
9 **MENTS.**

10 “(a) *COVERED EMPLOYERS AND INDIVIDUALS.—The*
11 *requirements of this subsection are met with respect to an*
12 *association health plan if, under the terms of the plan—*

13 “(1) *each participating employer must be—*

14 “(A) *a member of the sponsor,*

15 “(B) *the sponsor, or*

16 “(C) *an affiliated member of the sponsor*
17 *with respect to which the requirements of sub-*
18 *section (b) are met,*

19 *except that, in the case of a sponsor which is a profes-*
20 *sional association or other individual-based associa-*
21 *tion, if at least one of the officers, directors, or em-*
22 *ployees of an employer, or at least one of the individ-*
23 *uals who are partners in an employer and who ac-*
24 *tively participates in the business, is a member or*
25 *such an affiliated member of the sponsor, partici-*

1 *pating employers may also include such employer;*
2 *and*

3 *“(2) all individuals commencing coverage under*
4 *the plan after certification under this part must be—*

5 *“(A) active or retired owners (including*
6 *self-employed individuals), officers, directors, or*
7 *employees of, or partners in, participating em-*
8 *ployers; or*

9 *“(B) the beneficiaries of individuals de-*
10 *scribed in subparagraph (A).*

11 *“(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOY-*
12 *EES.—In the case of an association health plan in existence*
13 *on the date of the enactment of the Small Business Health*
14 *Fairness Act of 2017, an affiliated member of the sponsor*
15 *of the plan may be offered coverage under the plan as a*
16 *participating employer only if—*

17 *“(1) the affiliated member was an affiliated*
18 *member on the date of certification under this part;*
19 *or*

20 *“(2) during the 12-month period preceding the*
21 *date of the offering of such coverage, the affiliated*
22 *member has not maintained or contributed to a group*
23 *health plan with respect to any of its employees who*
24 *would otherwise be eligible to participate in such as-*
25 *sociation health plan.*

1 “(c) *INDIVIDUAL MARKET UNAFFECTED.*—*The re-*
2 *quirements of this subsection are met with respect to an*
3 *association health plan if, under the terms of the plan, no*
4 *participating employer may provide health insurance cov-*
5 *erage in the individual market for any employee not covered*
6 *under the plan which is similar to the coverage contempora-*
7 *neously provided to employees of the employer under the*
8 *plan, if such exclusion of the employee from coverage under*
9 *the plan is based on a health status-related factor with re-*
10 *spect to the employee and such employee would, but for such*
11 *exclusion on such basis, be eligible for coverage under the*
12 *plan.*

13 “(d) *PROHIBITION OF DISCRIMINATION AGAINST EM-*
14 *PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.*—
15 *The requirements of this subsection are met with respect to*
16 *an association health plan if—*

17 “(1) *under the terms of the plan, all employers*
18 *meeting the preceding requirements of this section are*
19 *eligible to qualify as participating employers for all*
20 *geographically available coverage options, unless, in*
21 *the case of any such employer, participation or con-*
22 *tribution requirements of the type referred to in sec-*
23 *tion 2711 of the Public Health Service Act are not*
24 *met;*

1 “(2) CONTRIBUTION RATES MUST BE NON-
2 DISCRIMINATORY.—

3 “(A) *The contribution rates for any partici-*
4 *pating small employer do not vary on the basis*
5 *of any health status-related factor in relation to*
6 *employees of such employer or their beneficiaries*
7 *and do not vary on the basis of the type of busi-*
8 *ness or industry in which such employer is en-*
9 *gaged.*

10 “(B) *Nothing in this title or any other pro-*
11 *vision of law shall be construed to preclude an*
12 *association health plan, or a health insurance*
13 *issuer offering health insurance coverage in con-*
14 *nection with an association health plan, from—*

15 “(i) *setting contribution rates based on*
16 *the claims experience of the plan; or*

17 “(ii) *varying contribution rates for*
18 *small employers in a State to the extent*
19 *that such rates could vary using the same*
20 *methodology employed in such State for reg-*
21 *ulating premium rates in the small group*
22 *market with respect to health insurance cov-*
23 *erage offered in connection with bona fide*
24 *associations (within the meaning of section*

1 2791(d)(3) of the Public Health Service
2 Act),
3 subject to the requirements of section 702(b) re-
4 lating to contribution rates.

5 “(3) FLOOR FOR NUMBER OF COVERED INDIVID-
6 UALS WITH RESPECT TO CERTAIN PLANS.—If any
7 benefit option under the plan does not consist of
8 health insurance coverage, the plan has as of the be-
9 ginning of the plan year not fewer than 1,000 partici-
10 pants and beneficiaries.

11 “(4) MARKETING REQUIREMENTS.—

12 “(A) IN GENERAL.—If a benefit option
13 which consists of health insurance coverage is of-
14 fered under the plan, State-licensed insurance
15 agents shall be used to distribute to small em-
16 ployers coverage which does not consist of health
17 insurance coverage in a manner comparable to
18 the manner in which such agents are used to dis-
19 tribute health insurance coverage.

20 “(B) STATE-LICENSED INSURANCE
21 AGENTS.—For purposes of subparagraph (A), the
22 term ‘State-licensed insurance agents’ means one
23 or more agents who are licensed in a State and
24 are subject to the laws of such State relating to
25 licensure, qualification, testing, examination,

1 *and continuing education of persons authorized*
2 *to offer, sell, or solicit health insurance coverage*
3 *in such State.*

4 “(5) *REGULATORY REQUIREMENTS.*—*Such other*
5 *requirements as the applicable authority determines*
6 *are necessary to carry out the purposes of this part,*
7 *which shall be prescribed by the applicable authority*
8 *by regulation.*

9 “(b) *ABILITY OF ASSOCIATION HEALTH PLANS TO DE-*
10 *SIGN BENEFIT OPTIONS.*—*Subject to section 514(d), noth-*
11 *ing in this part or any provision of State law (as defined*
12 *in section 514(c)(1)) shall be construed to preclude an asso-*
13 *ciation health plan, or a health insurance issuer offering*
14 *health insurance coverage in connection with an association*
15 *health plan, from exercising its sole discretion in selecting*
16 *the specific items and services consisting of medical care*
17 *to be included as benefits under such plan or coverage, ex-*
18 *cept (subject to section 514) in the case of (1) any law to*
19 *the extent that it is not preempted under section 731(a)(1)*
20 *with respect to matters governed by section 711, 712, or*
21 *713, or (2) any law of the State with which filing and ap-*
22 *proval of a policy type offered by the plan was initially*
23 *obtained to the extent that such law prohibits an exclusion*
24 *of a specific disease from such coverage.*

1 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
2 **FOR SOLVENCY FOR PLANS PROVIDING**
3 **HEALTH BENEFITS IN ADDITION TO HEALTH**
4 **INSURANCE COVERAGE.**

5 *“(a) IN GENERAL.—The requirements of this section*
6 *are met with respect to an association health plan if—*

7 *“(1) the benefits under the plan consist solely of*
8 *health insurance coverage; or*

9 *“(2) if the plan provides any additional benefit*
10 *options which do not consist of health insurance cov-*
11 *erage, the plan—*

12 *“(A) establishes and maintains reserves*
13 *with respect to such additional benefit options,*
14 *in amounts recommended by the qualified actu-*
15 *ary, consisting of—*

16 *“(i) a reserve sufficient for unearned*
17 *contributions;*

18 *“(ii) a reserve sufficient for benefit li-*
19 *abilities which have been incurred, which*
20 *have not been satisfied, and for which risk*
21 *of loss has not yet been transferred, and for*
22 *expected administrative costs with respect to*
23 *such benefit liabilities;*

24 *“(iii) a reserve sufficient for any other*
25 *obligations of the plan; and*

1 “(iv) a reserve sufficient for a margin
2 of error and other fluctuations, taking into
3 account the specific circumstances of the
4 plan; and

5 “(B) establishes and maintains aggregate
6 and specific excess/stop loss insurance and sol-
7 vency indemnification, with respect to such addi-
8 tional benefit options for which risk of loss has
9 not yet been transferred, as follows:

10 “(i) The plan shall secure aggregate ex-
11 cess/stop loss insurance for the plan with an
12 attachment point which is not greater than
13 125 percent of expected gross annual claims.
14 The applicable authority may by regulation
15 provide for upward adjustments in the
16 amount of such percentage in specified cir-
17 cumstances in which the plan specifically
18 provides for and maintains reserves in ex-
19 cess of the amounts required under subpara-
20 graph (A).

21 “(ii) The plan shall secure specific ex-
22 cess/stop loss insurance for the plan with an
23 attachment point which is at least equal to
24 an amount recommended by the plan’s
25 qualified actuary. The applicable authority

1 *may by regulation provide for adjustments*
2 *in the amount of such insurance in speci-*
3 *fied circumstances in which the plan spe-*
4 *cifically provides for and maintains re-*
5 *serves in excess of the amounts required*
6 *under subparagraph (A).*

7 *“(iii) The plan shall secure indem-*
8 *nification insurance for any claims which*
9 *the plan is unable to satisfy by reason of a*
10 *plan termination.*

11 *Any person issuing to a plan insurance described in clause*
12 *(i), (ii), or (iii) of subparagraph (B) shall notify the Sec-*
13 *retary of any failure of premium payment meriting can-*
14 *cellation of the policy prior to undertaking such a cancella-*
15 *tion. Any regulations prescribed by the applicable authority*
16 *pursuant to clause (i) or (ii) of subparagraph (B) may*
17 *allow for such adjustments in the required levels of excess/*
18 *stop loss insurance as the qualified actuary may rec-*
19 *ommend, taking into account the specific circumstances of*
20 *the plan.*

21 *“(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RE-*
22 *SERVES.—In the case of any association health plan de-*
23 *scribed in subsection (a)(2), the requirements of this sub-*
24 *section are met if the plan establishes and maintains sur-*
25 *plus in an amount at least equal to—*

1 “(1) \$500,000, or

2 “(2) such greater amount (but not greater than
3 \$2,000,000) as may be set forth in regulations pre-
4 scribed by the applicable authority, considering the
5 level of aggregate and specific excess/stop loss insur-
6 ance provided with respect to such plan and other
7 factors related to solvency risk, such as the plan’s pro-
8 jected levels of participation or claims, the nature of
9 the plan’s liabilities, and the types of assets available
10 to assure that such liabilities are met.

11 “(c) *ADDITIONAL REQUIREMENTS.*—*In the case of any*
12 *association health plan described in subsection (a)(2), the*
13 *applicable authority may provide such additional require-*
14 *ments relating to reserves, excess/stop loss insurance, and*
15 *indemnification insurance as the applicable authority con-*
16 *siders appropriate. Such requirements may be provided by*
17 *regulation with respect to any such plan or any class of*
18 *such plans.*

19 “(d) *ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-*
20 *ANCE.*—*The applicable authority may provide for adjust-*
21 *ments to the levels of reserves otherwise required under sub-*
22 *sections (a) and (b) with respect to any plan or class of*
23 *plans to take into account excess/stop loss insurance pro-*
24 *vided with respect to such plan or plans.*

1 “(e) *ALTERNATIVE MEANS OF COMPLIANCE.*—The ap-
2 plicable authority may permit an association health plan
3 described in subsection (a)(2) to substitute, for all or part
4 of the requirements of this section (except subsection
5 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
6 rangement, or other financial arrangement as the applica-
7 ble authority determines to be adequate to enable the plan
8 to fully meet all its financial obligations on a timely basis
9 and is otherwise no less protective of the interests of partici-
10 pants and beneficiaries than the requirements for which it
11 is substituted. The applicable authority may take into ac-
12 count, for purposes of this subsection, evidence provided by
13 the plan or sponsor which demonstrates an assumption of
14 liability with respect to the plan. Such evidence may be
15 in the form of a contract of indemnification, lien, bonding,
16 insurance, letter of credit, recourse under applicable terms
17 of the plan in the form of assessments of participating em-
18 ployers, security, or other financial arrangement.

19 “(f) *MEASURES TO ENSURE CONTINUED PAYMENT OF*
20 *BENEFITS BY CERTAIN PLANS IN DISTRESS.*—

21 “(1) *PAYMENTS BY CERTAIN PLANS TO ASSOCIA-*
22 *TION HEALTH PLAN FUND.*—

23 “(A) *IN GENERAL.*—In the case of an asso-
24 ciation health plan described in subsection
25 (a)(2), the requirements of this subsection are

1 met if the plan makes payments into the Asso-
2 ciation Health Plan Fund under this subpara-
3 graph when they are due. Such payments shall
4 consist of annual payments in the amount of
5 \$5,000, and, in addition to such annual pay-
6 ments, such supplemental payments as the Sec-
7 retary may determine to be necessary under
8 paragraph (2). Payments under this paragraph
9 are payable to the Fund at the time determined
10 by the Secretary. Initial payments are due in
11 advance of certification under this part. Pay-
12 ments shall continue to accrue until a plan's as-
13 sets are distributed pursuant to a termination
14 procedure.

15 “(B) *PENALTIES FOR FAILURE TO MAKE*
16 *PAYMENTS.*—If any payment is not made by a
17 plan when it is due, a late payment charge of
18 not more than 100 percent of the payment which
19 was not timely paid shall be payable by the plan
20 to the Fund.

21 “(C) *CONTINUED DUTY OF THE SEC-*
22 *RETARY.*—The Secretary shall not cease to carry
23 out the provisions of paragraph (2) on account
24 of the failure of a plan to pay any payment
25 when due.

1 “(2) *PAYMENTS BY SECRETARY TO CONTINUE EX-*
2 *CESS/STOP LOSS INSURANCE COVERAGE AND INDEM-*
3 *NIFICATION INSURANCE COVERAGE FOR CERTAIN*
4 *PLANS.—In any case in which the applicable author-*
5 *ity determines that there is, or that there is reason to*
6 *believe that there will be: (A) A failure to take nec-*
7 *essary corrective actions under section 809(a) with re-*
8 *spect to an association health plan described in sub-*
9 *section (a)(2); or (B) a termination of such a plan*
10 *under section 809(b) or 810(b)(8) (and, if the appli-*
11 *cable authority is not the Secretary, certifies such de-*
12 *termination to the Secretary), the Secretary shall de-*
13 *termine the amounts necessary to make payments to*
14 *an insurer (designated by the Secretary) to maintain*
15 *in force excess/stop loss insurance coverage or indem-*
16 *nification insurance coverage for such plan, if the*
17 *Secretary determines that there is a reasonable expec-*
18 *tation that, without such payments, claims would not*
19 *be satisfied by reason of termination of such coverage.*
20 *The Secretary shall, to the extent provided in advance*
21 *in appropriation Acts, pay such amounts so deter-*
22 *mined to the insurer designated by the Secretary.*

23 “(3) *ASSOCIATION HEALTH PLAN FUND.—*

24 “(A) *IN GENERAL.—There is established on*
25 *the books of the Treasury a fund to be known as*

1 the ‘Association Health Plan Fund’. The Fund
2 shall be available for making payments pursuant
3 to paragraph (2). The Fund shall be credited
4 with payments received pursuant to paragraph
5 (1)(A), penalties received pursuant to paragraph
6 (1)(B); and earnings on investments of amounts
7 of the Fund under subparagraph (B).

8 “(B) INVESTMENT.—Whenever the Secretary
9 determines that the moneys of the fund are in ex-
10 cess of current needs, the Secretary may request
11 the investment of such amounts as the Secretary
12 determines advisable by the Secretary of the
13 Treasury in obligations issued or guaranteed by
14 the United States.

15 “(g) EXCESS/STOP LOSS INSURANCE.—For purposes
16 of this section—

17 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
18 ANCE.—The term ‘aggregate excess/stop loss insur-
19 ance’ means, in connection with an association health
20 plan, a contract—

21 “(A) under which an insurer (meeting such
22 minimum standards as the applicable authority
23 may prescribe by regulation) provides for pay-
24 ment to the plan with respect to aggregate claims

1 *under the plan in excess of an amount or*
2 *amounts specified in such contract;*

3 *“(B) which is guaranteed renewable; and*

4 *“(C) which allows for payment of premiums*
5 *by any third party on behalf of the insured plan.*

6 *“(2) SPECIFIC EXCESS/STOP LOSS INSURANCE.—*

7 *The term ‘specific excess/stop loss insurance’ means,*
8 *in connection with an association health plan, a con-*
9 *tract—*

10 *“(A) under which an insurer (meeting such*
11 *minimum standards as the applicable authority*
12 *may prescribe by regulation) provides for pay-*
13 *ment to the plan with respect to claims under*
14 *the plan in connection with a covered individual*
15 *in excess of an amount or amounts specified in*
16 *such contract in connection with such covered in-*
17 *dividual;*

18 *“(B) which is guaranteed renewable; and*

19 *“(C) which allows for payment of premiums*
20 *by any third party on behalf of the insured plan.*

21 *“(h) INDEMNIFICATION INSURANCE.—For purposes of*
22 *this section, the term ‘indemnification insurance’ means, in*
23 *connection with an association health plan, a contract—*

24 *“(1) under which an insurer (meeting such min-*
25 *imum standards as the applicable authority may pre-*

1 scribe by regulation) provides for payment to the plan
2 with respect to claims under the plan which the plan
3 is unable to satisfy by reason of a termination pursu-
4 ant to section 809(b) (relating to mandatory termi-
5 nation);

6 “(2) which is guaranteed renewable and
7 noncancellable for any reason (except as the applica-
8 ble authority may prescribe by regulation); and

9 “(3) which allows for payment of premiums by
10 any third party on behalf of the insured plan.

11 “(i) *RESERVES*.—For purposes of this section, the term
12 ‘reserves’ means, in connection with an association health
13 plan, plan assets which meet the fiduciary standards under
14 part 4 and such additional requirements regarding liquid-
15 ity as the applicable authority may prescribe by regulation.

16 “(j) *SOLVENCY STANDARDS WORKING GROUP*.—

17 “(1) *IN GENERAL*.—Within 90 days after the
18 date of the enactment of the Small Business Health
19 Fairness Act of 2017, the applicable authority shall
20 establish a Solvency Standards Working Group. In
21 prescribing the initial regulations under this section,
22 the applicable authority shall take into account the
23 recommendations of such Working Group.

24 “(2) *MEMBERSHIP*.—The Working Group shall
25 consist of not more than 15 members appointed by the

1 applicable authority. The applicable authority shall
2 include among persons invited to membership on the
3 Working Group at least one of each of the following:

4 “(A) A representative of the National Asso-
5 ciation of Insurance Commissioners.

6 “(B) A representative of the American
7 Academy of Actuaries.

8 “(C) A representative of the State govern-
9 ments, or their interests.

10 “(D) A representative of existing self-in-
11 sured arrangements, or their interests.

12 “(E) A representative of associations of the
13 type referred to in section 801(b)(1), or their in-
14 terests.

15 “(F) A representative of multiemployer
16 plans that are group health plans, or their inter-
17 ests.

18 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
19 **LATED REQUIREMENTS.**

20 “(a) **FILING FEE.**—Under the procedure prescribed
21 pursuant to section 802(a), an association health plan shall
22 pay to the applicable authority at the time of filing an ap-
23 plication for certification under this part a filing fee in
24 the amount of \$5,000, which shall be available in the case
25 of the Secretary, to the extent provided in appropriation

1 *Acts, for the sole purpose of administering the certification*
2 *procedures applicable with respect to association health*
3 *plans.*

4 “(b) *INFORMATION TO BE INCLUDED IN APPLICATION*
5 *FOR CERTIFICATION.*—*An application for certification*
6 *under this part meets the requirements of this section only*
7 *if it includes, in a manner and form which shall be pre-*
8 *scribed by the applicable authority by regulation, at least*
9 *the following information:*

10 “(1) *IDENTIFYING INFORMATION.*—*The names*
11 *and addresses of—*

12 “(A) *the sponsor; and*

13 “(B) *the members of the board of trustees of*
14 *the plan.*

15 “(2) *STATES IN WHICH PLAN INTENDS TO DO*
16 *BUSINESS.*—*The States in which participants and*
17 *beneficiaries under the plan are to be located and the*
18 *number of them expected to be located in each such*
19 *State.*

20 “(3) *BONDING REQUIREMENTS.*—*Evidence pro-*
21 *vided by the board of trustees that the bonding re-*
22 *quirements of section 412 will be met as of the date*
23 *of the application or (if later) commencement of oper-*
24 *ations.*

1 “(4) *PLAN DOCUMENTS.*—A copy of the docu-
2 ments governing the plan (including any bylaws and
3 trust agreements), the summary plan description, and
4 other material describing the benefits that will be pro-
5 vided to participants and beneficiaries under the
6 plan.

7 “(5) *AGREEMENTS WITH SERVICE PROVIDERS.*—
8 A copy of any agreements between the plan and con-
9 tract administrators and other service providers.

10 “(6) *FUNDING REPORT.*—In the case of associa-
11 tion health plans providing benefits options in addi-
12 tion to health insurance coverage, a report setting
13 forth information with respect to such additional ben-
14 efit options determined as of a date within the 120-
15 day period ending with the date of the application,
16 including the following:

17 “(A) *RESERVES.*—A statement, certified by
18 the board of trustees of the plan, and a statement
19 of actuarial opinion, signed by a qualified actu-
20 ary, that all applicable requirements of section
21 806 are or will be met in accordance with regu-
22 lations which the applicable authority shall pre-
23 scribe.

24 “(B) *ADEQUACY OF CONTRIBUTION*
25 *RATES.*—A statement of actuarial opinion,

1 *signed by a qualified actuary, which sets forth a*
2 *description of the extent to which contribution*
3 *rates are adequate to provide for the payment of*
4 *all obligations and the maintenance of required*
5 *reserves under the plan for the 12-month period*
6 *beginning with such date within such 120-day*
7 *period, taking into account the expected coverage*
8 *and experience of the plan. If the contribution*
9 *rates are not fully adequate, the statement of ac-*
10 *tuarial opinion shall indicate the extent to which*
11 *the rates are inadequate and the changes needed*
12 *to ensure adequacy.*

13 “(C) *CURRENT AND PROJECTED VALUE OF*
14 *ASSETS AND LIABILITIES.—A statement of actu-*
15 *arial opinion signed by a qualified actuary,*
16 *which sets forth the current value of the assets*
17 *and liabilities accumulated under the plan and*
18 *a projection of the assets, liabilities, income, and*
19 *expenses of the plan for the 12-month period re-*
20 *ferred to in subparagraph (B). The income state-*
21 *ment shall identify separately the plan’s admin-*
22 *istrative expenses and claims.*

23 “(D) *COSTS OF COVERAGE TO BE CHARGED*
24 *AND OTHER EXPENSES.—A statement of the costs*
25 *of coverage to be charged, including an*

1 *itemization of amounts for administration, re-*
2 *serves, and other expenses associated with the op-*
3 *eration of the plan.*

4 “(E) *OTHER INFORMATION.*—*Any other in-*
5 *formation as may be determined by the applica-*
6 *ble authority, by regulation, as necessary to*
7 *carry out the purposes of this part.*

8 “(c) *FILING NOTICE OF CERTIFICATION WITH*
9 *STATES.*—*A certification granted under this part to an as-*
10 *sociation health plan shall not be effective unless written*
11 *notice of such certification is filed with the applicable State*
12 *authority of each State in which at least 25 percent of the*
13 *participants and beneficiaries under the plan are located.*
14 *For purposes of this subsection, an individual shall be con-*
15 *sidered to be located in the State in which a known address*
16 *of such individual is located or in which such individual*
17 *is employed.*

18 “(d) *NOTICE OF MATERIAL CHANGES.*—*In the case of*
19 *any association health plan certified under this part, de-*
20 *scriptions of material changes in any information which*
21 *was required to be submitted with the application for the*
22 *certification under this part shall be filed in such form and*
23 *manner as shall be prescribed by the applicable authority*
24 *by regulation. The applicable authority may require by reg-*
25 *ulation prior notice of material changes with respect to*

1 *specified matters which might serve as the basis for suspen-*
2 *sion or revocation of the certification.*

3 “(e) *REPORTING REQUIREMENTS FOR CERTAIN ASSO-*
4 *CIATION HEALTH PLANS.—An association health plan cer-*
5 *tified under this part which provides benefit options in ad-*
6 *dition to health insurance coverage for such plan year shall*
7 *meet the requirements of section 103 by filing an annual*
8 *report under such section which shall include information*
9 *described in subsection (b)(6) with respect to the plan year*
10 *and, notwithstanding section 104(a)(1)(A), shall be filed*
11 *with the applicable authority not later than 90 days after*
12 *the close of the plan year (or on such later date as may*
13 *be prescribed by the applicable authority). The applicable*
14 *authority may require by regulation such interim reports*
15 *as it considers appropriate.*

16 “(f) *ENGAGEMENT OF QUALIFIED ACTUARY.—The*
17 *board of trustees of each association health plan which pro-*
18 *vides benefits options in addition to health insurance cov-*
19 *erage and which is applying for certification under this*
20 *part or is certified under this part shall engage, on behalf*
21 *of all participants and beneficiaries, a qualified actuary*
22 *who shall be responsible for the preparation of the materials*
23 *comprising information necessary to be submitted by a*
24 *qualified actuary under this part. The qualified actuary*
25 *shall utilize such assumptions and techniques as are nec-*

1 *essary to enable such actuary to form an opinion as to*
2 *whether the contents of the matters reported under this*
3 *part—*

4 “(1) *are in the aggregate reasonably related to*
5 *the experience of the plan and to reasonable expecta-*
6 *tions; and*

7 “(2) *represent such actuary’s best estimate of an-*
8 *ticipated experience under the plan.*

9 *The opinion by the qualified actuary shall be made with*
10 *respect to, and shall be made a part of, the annual report.*

11 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
12 **MINATION.**

13 “*Except as provided in section 809(b), an association*
14 *health plan which is or has been certified under this part*
15 *may terminate (upon or at any time after cessation of ac-*
16 *cruals in benefit liabilities) only if the board of trustees,*
17 *not less than 60 days before the proposed termination*
18 *date—*

19 “(1) *provides to the participants and bene-*
20 *ficiaries a written notice of intent to terminate stat-*
21 *ing that such termination is intended and the pro-*
22 *posed termination date;*

23 “(2) *develops a plan for winding up the affairs*
24 *of the plan in connection with such termination in a*

1 *manner which will result in timely payment of all*
2 *benefits for which the plan is obligated; and*

3 *“(3) submits such plan in writing to the appli-*
4 *cable authority.*

5 *Actions required under this section shall be taken in such*
6 *form and manner as may be prescribed by the applicable*
7 *authority by regulation.*

8 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
9 **NATION.**

10 *“(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—*
11 *An association health plan which is certified under this*
12 *part and which provides benefits other than health insur-*
13 *ance coverage shall continue to meet the requirements of sec-*
14 *tion 806, irrespective of whether such certification continues*
15 *in effect. The board of trustees of such plan shall determine*
16 *quarterly whether the requirements of section 806 are met.*
17 *In any case in which the board determines that there is*
18 *reason to believe that there is or will be a failure to meet*
19 *such requirements, or the applicable authority makes such*
20 *a determination and so notifies the board, the board shall*
21 *immediately notify the qualified actuary engaged by the*
22 *plan, and such actuary shall, not later than the end of the*
23 *next following month, make such recommendations to the*
24 *board for corrective action as the actuary determines nec-*
25 *essary to ensure compliance with section 806. Not later than*

1 30 days after receiving from the actuary recommendations
2 for corrective actions, the board shall notify the applicable
3 authority (in such form and manner as the applicable au-
4 thority may prescribe by regulation) of such recommenda-
5 tions of the actuary for corrective action, together with a
6 description of the actions (if any) that the board has taken
7 or plans to take in response to such recommendations. The
8 board shall thereafter report to the applicable authority, in
9 such form and frequency as the applicable authority may
10 specify to the board, regarding corrective action taken by
11 the board until the requirements of section 806 are met.

12 “(b) *MANDATORY TERMINATION.*—In any case in
13 which—

14 “(1) the applicable authority has been notified
15 under subsection (a) (or by an issuer of excess/stop
16 loss insurance or indemnity insurance pursuant to
17 section 806(a)) of a failure of an association health
18 plan which is or has been certified under this part
19 and is described in section 806(a)(2) to meet the re-
20 quirements of section 806 and has not been notified
21 by the board of trustees of the plan that corrective ac-
22 tion has restored compliance with such requirements;
23 and

24 “(2) the applicable authority determines that
25 there is a reasonable expectation that the plan will

1 *continue to fail to meet the requirements of section*
2 806,
3 *the board of trustees of the plan shall, at the direction of*
4 *the applicable authority, terminate the plan and, in the*
5 *course of the termination, take such actions as the applica-*
6 *ble authority may require, including satisfying any claims*
7 *referred to in section 806(a)(2)(B)(iii) and recovering for*
8 *the plan any liability under subsection (a)(2)(B)(iii) or (e)*
9 *of section 806, as necessary to ensure that the affairs of the*
10 *plan will be, to the maximum extent possible, wound up*
11 *in a manner which will result in timely provision of all*
12 *benefits for which the plan is obligated.*

13 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
14 **VENT ASSOCIATION HEALTH PLANS PRO-**
15 **VIDING HEALTH BENEFITS IN ADDITION TO**
16 **HEALTH INSURANCE COVERAGE.**

17 **“(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR**
18 **INSOLVENT PLANS.—***Whenever the Secretary determines*
19 *that an association health plan which is or has been cer-*
20 *tified under this part and which is described in section*
21 *806(a)(2) will be unable to provide benefits when due or*
22 *is otherwise in a financially hazardous condition, as shall*
23 *be defined by the Secretary by regulation, the Secretary*
24 *shall, upon notice to the plan, apply to the appropriate*
25 *United States district court for appointment of the Sec-*

1 *retary as trustee to administer the plan for the duration*
2 *of the insolvency. The plan may appear as a party and*
3 *other interested persons may intervene in the proceedings*
4 *at the discretion of the court. The court shall appoint such*
5 *Secretary trustee if the court determines that the trusteeship*
6 *is necessary to protect the interests of the participants and*
7 *beneficiaries or providers of medical care or to avoid any*
8 *unreasonable deterioration of the financial condition of the*
9 *plan. The trusteeship of such Secretary shall continue until*
10 *the conditions described in the first sentence of this sub-*
11 *section are remedied or the plan is terminated.*

12 “(b) *POWERS AS TRUSTEE.*—*The Secretary, upon ap-*
13 *pointment as trustee under subsection (a), shall have the*
14 *power—*

15 “(1) *to do any act authorized by the plan, this*
16 *title, or other applicable provisions of law to be done*
17 *by the plan administrator or any trustee of the plan;*

18 “(2) *to require the transfer of all (or any part)*
19 *of the assets and records of the plan to the Secretary*
20 *as trustee;*

21 “(3) *to invest any assets of the plan which the*
22 *Secretary holds in accordance with the provisions of*
23 *the plan, regulations prescribed by the Secretary, and*
24 *applicable provisions of law;*

1 “(4) to require the sponsor, the plan adminis-
2 trator, any participating employer, and any em-
3 ployee organization representing plan participants to
4 furnish any information with respect to the plan
5 which the Secretary as trustee may reasonably need
6 in order to administer the plan;

7 “(5) to collect for the plan any amounts due the
8 plan and to recover reasonable expenses of the trustee-
9 ship;

10 “(6) to commence, prosecute, or defend on behalf
11 of the plan any suit or proceeding involving the plan;

12 “(7) to issue, publish, or file such notices, state-
13 ments, and reports as may be required by the Sec-
14 retary by regulation or required by any order of the
15 court;

16 “(8) to terminate the plan (or provide for its ter-
17 mination in accordance with section 809(b)) and liq-
18 uidate the plan assets, to restore the plan to the re-
19 sponsibility of the sponsor, or to continue the trustee-
20 ship;

21 “(9) to provide for the enrollment of plan par-
22 ticipants and beneficiaries under appropriate cov-
23 erage options; and

24 “(10) to do such other acts as may be necessary
25 to comply with this title or any order of the court and

1 *to protect the interests of plan participants and bene-*
2 *ficiaries and providers of medical care.*

3 “(c) *NOTICE OF APPOINTMENT.*—*As soon as prac-*
4 *ticable after the Secretary’s appointment as trustee, the Sec-*
5 *retary shall give notice of such appointment to—*

6 “(1) *the sponsor and plan administrator;*

7 “(2) *each participant;*

8 “(3) *each participating employer; and*

9 “(4) *if applicable, each employee organization*
10 *which, for purposes of collective bargaining, rep-*
11 *resents plan participants.*

12 “(d) *ADDITIONAL DUTIES.*—*Except to the extent in-*
13 *consistent with the provisions of this title, or as may be*
14 *otherwise ordered by the court, the Secretary, upon appoint-*
15 *ment as trustee under this section, shall be subject to the*
16 *same duties as those of a trustee under section 704 of title*
17 *11, United States Code, and shall have the duties of a fidu-*
18 *ciary for purposes of this title.*

19 “(e) *OTHER PROCEEDINGS.*—*An application by the*
20 *Secretary under this subsection may be filed notwith-*
21 *standing the pendency in the same or any other court of*
22 *any bankruptcy, mortgage foreclosure, or equity receiver-*
23 *ship proceeding, or any proceeding to reorganize, conserve,*
24 *or liquidate such plan or its property, or any proceeding*
25 *to enforce a lien against property of the plan.*

1 “(f) *JURISDICTION OF COURT.*—

2 “(1) *IN GENERAL.*—Upon the filing of an appli-
3 cation for the appointment as trustee or the issuance
4 of a decree under this section, the court to which the
5 application is made shall have exclusive jurisdiction
6 of the plan involved and its property wherever located
7 with the powers, to the extent consistent with the pur-
8 poses of this section, of a court of the United States
9 having jurisdiction over cases under chapter 11 of
10 title 11, United States Code. Pending an adjudication
11 under this section such court shall stay, and upon ap-
12 pointment by it of the Secretary as trustee, such court
13 shall continue the stay of, any pending mortgage fore-
14 closure, equity receivership, or other proceeding to re-
15 organize, conserve, or liquidate the plan, the sponsor,
16 or property of such plan or sponsor, and any other
17 suit against any receiver, conservator, or trustee of
18 the plan, the sponsor, or property of the plan or spon-
19 sor. Pending such adjudication and upon the ap-
20 pointment by it of the Secretary as trustee, the court
21 may stay any proceeding to enforce a lien against
22 property of the plan or the sponsor or any other suit
23 against the plan or the sponsor.

24 “(2) *VENUE.*—An action under this section may
25 be brought in the judicial district where the sponsor

1 *or the plan administrator resides or does business or*
2 *where any asset of the plan is situated. A district*
3 *court in which such action is brought may issue proc-*
4 *ess with respect to such action in any other judicial*
5 *district.*

6 *“(g) PERSONNEL.—In accordance with regulations*
7 *which shall be prescribed by the Secretary, the Secretary*
8 *shall appoint, retain, and compensate accountants, actu-*
9 *aries, and other professional service personnel as may be*
10 *necessary in connection with the Secretary’s service as*
11 *trustee under this section.*

12 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

13 *“(a) IN GENERAL.—Notwithstanding section 514, a*
14 *State may impose by law a contribution tax on an associa-*
15 *tion health plan described in section 806(a)(2), if the plan*
16 *commenced operations in such State after the date of the*
17 *enactment of the Small Business Health Fairness Act of*
18 *2017.*

19 *“(b) CONTRIBUTION TAX.—For purposes of this sec-*
20 *tion, the term ‘contribution tax’ imposed by a State on an*
21 *association health plan means any tax imposed by such*
22 *State if—*

23 *“(1) such tax is computed by applying a rate to*
24 *the amount of premiums or contributions, with re-*
25 *spect to individuals covered under the plan who are*

1 *residents of such State, which are received by the plan*
2 *from participating employers located in such State or*
3 *from such individuals;*

4 *“(2) the rate of such tax does not exceed the rate*
5 *of any tax imposed by such State on premiums or*
6 *contributions received by insurers or health mainte-*
7 *nance organizations for health insurance coverage of-*
8 *fered in such State in connection with a group health*
9 *plan;*

10 *“(3) such tax is otherwise nondiscriminatory;*
11 *and*

12 *“(4) the amount of any such tax assessed on the*
13 *plan is reduced by the amount of any tax or assess-*
14 *ment otherwise imposed by the State on premiums,*
15 *contributions, or both received by insurers or health*
16 *maintenance organizations for health insurance cov-*
17 *erage, aggregate excess/stop loss insurance (as defined*
18 *in section 806(g)(1)), specific excess/stop loss insur-*
19 *ance (as defined in section 806(g)(2)), other insurance*
20 *related to the provision of medical care under the*
21 *plan, or any combination thereof provided by such in-*
22 *surers or health maintenance organizations in such*
23 *State in connection with such plan.*

24 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

25 *“(a) DEFINITIONS.—For purposes of this part—*

1 “(1) *GROUP HEALTH PLAN.*—The term ‘group
2 health plan’ has the meaning provided in section
3 733(a)(1) (after applying subsection (b) of this sec-
4 tion).

5 “(2) *MEDICAL CARE.*—The term ‘medical care’
6 has the meaning provided in section 733(a)(2).

7 “(3) *HEALTH INSURANCE COVERAGE.*—The term
8 ‘health insurance coverage’ has the meaning provided
9 in section 733(b)(1).

10 “(4) *HEALTH INSURANCE ISSUER.*—The term
11 ‘health insurance issuer’ has the meaning provided in
12 section 733(b)(2).

13 “(5) *APPLICABLE AUTHORITY.*—The term ‘appli-
14 cable authority’ means the Secretary, except that, in
15 connection with any exercise of the Secretary’s au-
16 thority regarding which the Secretary is required
17 under section 506(d) to consult with a State, such
18 term means the Secretary, in consultation with such
19 State.

20 “(6) *HEALTH STATUS-RELATED FACTOR.*—The
21 term ‘health status-related factor’ has the meaning
22 provided in section 733(d)(2).

23 “(7) *INDIVIDUAL MARKET.*—

24 “(A) *IN GENERAL.*—The term ‘individual
25 market’ means the market for health insurance

1 *coverage offered to individuals other than in con-*
2 *nection with a group health plan.*

3 “(B) *TREATMENT OF VERY SMALL*
4 *GROUPS.—*

5 “(i) *IN GENERAL.—Subject to clause*
6 *(ii), such term includes coverage offered in*
7 *connection with a group health plan that*
8 *has fewer than 2 participants as current*
9 *employees or participants described in sec-*
10 *tion 732(d)(3) on the first day of the plan*
11 *year.*

12 “(ii) *STATE EXCEPTION.—Clause (i)*
13 *shall not apply in the case of health insur-*
14 *ance coverage offered in a State if such*
15 *State regulates the coverage described in*
16 *such clause in the same manner and to the*
17 *same extent as coverage in the small group*
18 *market (as defined in section 2791(e)(5) of*
19 *the Public Health Service Act) is regulated*
20 *by such State.*

21 “(8) *PARTICIPATING EMPLOYER.—The term ‘par-*
22 *ticipating employer’ means, in connection with an as-*
23 *sociation health plan, any employer, if any indi-*
24 *vidual who is an employee of such employer, a part-*
25 *ner in such employer, or a self-employed individual*

1 *who is such employer (or any dependent, as defined*
2 *under the terms of the plan, of such individual) is or*
3 *was covered under such plan in connection with the*
4 *status of such individual as such an employee, part-*
5 *ner, or self-employed individual in relation to the*
6 *plan.*

7 “(9) *APPLICABLE STATE AUTHORITY.*—*The term*
8 *‘applicable State authority’ means, with respect to a*
9 *health insurance issuer in a State, the State insur-*
10 *ance commissioner or official or officials designated*
11 *by the State to enforce the requirements of title XXVII*
12 *of the Public Health Service Act for the State involved*
13 *with respect to such issuer.*

14 “(10) *QUALIFIED ACTUARY.*—*The term ‘qualified*
15 *actuary’ means an individual who is a member of the*
16 *American Academy of Actuaries.*

17 “(11) *AFFILIATED MEMBER.*—*The term ‘affili-*
18 *ated member’ means, in connection with a sponsor—*

19 “(A) *a person who is otherwise eligible to be*
20 *a member of the sponsor but who elects an affili-*
21 *ated status with the sponsor,*

22 “(B) *in the case of a sponsor with members*
23 *which consist of associations, a person who is a*
24 *member of any such association and elects an af-*
25 *filiated status with the sponsor, or*

1 “(C) *in the case of an association health*
2 *plan in existence on the date of the enactment of*
3 *the Small Business Health Fairness Act of 2017,*
4 *a person eligible to be a member of the sponsor*
5 *or one of its member associations.*

6 “(12) *LARGE EMPLOYER.—The term ‘large em-*
7 *ployer’ means, in connection with a group health*
8 *plan with respect to a plan year, an employer who*
9 *employed an average of at least 51 employees on busi-*
10 *ness days during the preceding calendar year and*
11 *who employs at least 2 employees on the first day of*
12 *the plan year.*

13 “(13) *SMALL EMPLOYER.—The term ‘small em-*
14 *ployer’ means, in connection with a group health*
15 *plan with respect to a plan year, an employer who*
16 *is not a large employer.*

17 “(b) *RULES OF CONSTRUCTION.—*

18 “(1) *EMPLOYERS AND EMPLOYEES.—For pur-*
19 *poses of determining whether a plan, fund, or pro-*
20 *gram is an employee welfare benefit plan which is an*
21 *association health plan, and for purposes of applying*
22 *this title in connection with such plan, fund, or pro-*
23 *gram so determined to be such an employee welfare*
24 *benefit plan—*

1 “(A) *in the case of a partnership, the term*
2 *‘employer’ (as defined in section 3(5)) includes*
3 *the partnership in relation to the partners, and*
4 *the term ‘employee’ (as defined in section 3(6))*
5 *includes any partner in relation to the partner-*
6 *ship; and*

7 “(B) *in the case of a self-employed indi-*
8 *vidual, the term ‘employer’ (as defined in section*
9 *3(5)) and the term ‘employee’ (as defined in sec-*
10 *tion 3(6)) shall include such individual.*

11 “(2) *PLANS, FUNDS, AND PROGRAMS TREATED AS*
12 *EMPLOYEE WELFARE BENEFIT PLANS.—In the case of*
13 *any plan, fund, or program which was established or*
14 *is maintained for the purpose of providing medical*
15 *care (through the purchase of insurance or otherwise)*
16 *for employees (or their dependents) covered thereunder*
17 *and which demonstrates to the Secretary that all re-*
18 *quirements for certification under this part would be*
19 *met with respect to such plan, fund, or program if*
20 *such plan, fund, or program were a group health*
21 *plan, such plan, fund, or program shall be treated for*
22 *purposes of this title as an employee welfare benefit*
23 *plan on and after the date of such demonstration.”.*

24 **(b) CONFORMING AMENDMENTS TO PREEMPTION**
25 *RULES.—*

1 (1) *Section 514(b)(6) of such Act (29 U.S.C.*
2 *1144(b)(6)) is amended by adding at the end the fol-*
3 *lowing new subparagraph:*

4 *“(E) The preceding subparagraphs of this paragraph*
5 *do not apply with respect to any State law in the case of*
6 *an association health plan which is certified under part 8.”.*

7 (2) *Section 514 of such Act (29 U.S.C. 1144) is*
8 *amended—*

9 (A) *in subsection (b)(4), by striking “Sub-*
10 *section (a)” and inserting “Subsections (a) and*
11 *(f)”;*

12 (B) *in subsection (b)(5), by striking “sub-*
13 *section (a)” in subparagraph (A) and inserting*
14 *“subsection (a) of this section and subsections*
15 *(a)(2)(B) and (b) of section 805”, and by strik-*
16 *ing “subsection (a)” in subparagraph (B) and*
17 *inserting “subsection (a) of this section or sub-*
18 *section (a)(2)(B) or (b) of section 805”; and*

19 (C) *by adding at the end the following new*
20 *subsection:*

21 *“(f)(1) Except as provided in subsection (b)(4), the*
22 *provisions of this title shall supersede any and all State*
23 *laws insofar as they may now or hereafter preclude, or have*
24 *the effect of precluding, a health insurance issuer from offer-*

1 *ing health insurance coverage in connection with an asso-*
2 *ciation health plan which is certified under part 8.*

3 “(2) *Except as provided in paragraphs (4) and (5) of*
4 *subsection (b) of this section—*

5 “(A) *In any case in which health insurance cov-*
6 *erage of any policy type is offered under an associa-*
7 *tion health plan certified under part 8 to a partici-*
8 *pating employer operating in such State, the provi-*
9 *sions of this title shall supersede any and all laws of*
10 *such State insofar as they may preclude a health in-*
11 *surance issuer from offering health insurance coverage*
12 *of the same policy type to other employers operating*
13 *in the State which are eligible for coverage under such*
14 *association health plan, whether or not such other em-*
15 *ployers are participating employers in such plan.*

16 “(B) *In any case in which health insurance cov-*
17 *erage of any policy type is offered in a State under*
18 *an association health plan certified under part 8 and*
19 *the filing, with the applicable State authority (as de-*
20 *fined in section 812(a)(9)), of the policy form in con-*
21 *nection with such policy type is approved by such*
22 *State authority, the provisions of this title shall su-*
23 *persede any and all laws of any other State in which*
24 *health insurance coverage of such type is offered, inso-*
25 *far as they may preclude, upon the filing in the same*

1 *form and manner of such policy form with the appli-*
2 *cable State authority in such other State, the ap-*
3 *proval of the filing in such other State.*

4 “(3) *Nothing in subsection (b)(6)(E) or the preceding*
5 *provisions of this subsection shall be construed, with respect*
6 *to health insurance issuers or health insurance coverage, to*
7 *supersede or impair the law of any State—*

8 “(A) *providing solvency standards or similar*
9 *standards regarding the adequacy of insurer capital,*
10 *surplus, reserves, or contributions, or*

11 “(B) *relating to prompt payment of claims.*

12 “(4) *For additional provisions relating to association*
13 *health plans, see subsections (a)(2)(B) and (b) of section*
14 *805.*

15 “(5) *For purposes of this subsection, the term ‘associa-*
16 *tion health plan’ has the meaning provided in section*
17 *801(a), and the terms ‘health insurance coverage’, ‘partici-*
18 *pating employer’, and ‘health insurance issuer’ have the*
19 *meanings provided such terms in section 812, respectively.”.*

20 (3) *Section 514(b)(6)(A) of such Act (29 U.S.C.*
21 *1144(b)(6)(A)) is amended—*

22 (A) *in clause (i)(II), by striking “and” at*
23 *the end;*

24 (B) *in clause (ii), by inserting “and which*
25 *does not provide medical care (within the mean-*

1 ing of section 733(a)(2)),” after “arrangement,”
2 and by striking “title.” and inserting “title,
3 and”; and

4 (C) by adding at the end the following new
5 clause:

6 “(iii) subject to subparagraph (E), in the case of
7 any other employee welfare benefit plan which is a
8 multiple employer welfare arrangement and which
9 provides medical care (within the meaning of section
10 733(a)(2)), any law of any State which regulates in-
11 surance may apply.”.

12 (4) Section 514(d) of such Act (29 U.S.C.
13 1144(d)) is amended—

14 (A) by striking “Nothing” and inserting
15 “(1) Except as provided in paragraph (2), noth-
16 ing”; and

17 (B) by adding at the end the following new
18 paragraph:

19 “(2) Nothing in any other provision of law enacted
20 on or after the date of the enactment of the Small Business
21 Health Fairness Act of 2017 shall be construed to alter,
22 amend, modify, invalidate, impair, or supersede any provi-
23 sion of this title, except by specific cross-reference to the af-
24 fected section.”.

1 (c) *PLAN SPONSOR.*—Section 3(16)(B) of such Act (29
2 U.S.C. 102(16)(B)) is amended by adding at the end the
3 following new sentence: “Such term also includes a person
4 serving as the sponsor of an association health plan under
5 part 8.”.

6 (d) *DISCLOSURE OF SOLVENCY PROTECTIONS RE-*
7 *LATED TO SELF-INSURED AND FULLY INSURED OPTIONS*
8 *UNDER ASSOCIATION HEALTH PLANS.*—Section 102(b) of
9 such Act (29 U.S.C. 102(b)) is amended by adding at the
10 end the following: “An association health plan shall include
11 in its summary plan description, in connection with each
12 benefit option, a description of the form of solvency or guar-
13 antee fund protection secured pursuant to this Act or appli-
14 cable State law, if any.”.

15 (e) *SAVINGS CLAUSE.*—Section 731(c) of such Act is
16 amended by inserting “or part 8” after “this part”.

17 (f) *REPORT TO THE CONGRESS REGARDING CERTIFI-*
18 *CATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.*—
19 Not later than January 1, 2022, the Secretary of Labor
20 shall report to the Committee on Education and the Work-
21 force of the House of Representatives and the Committee
22 on Health, Education, Labor, and Pensions of the Senate
23 the effect association health plans have had, if any, on re-
24 ducing the number of uninsured individuals.

1 (g) *CLERICAL AMENDMENT.—The table of contents in*
 2 *section 1 of the Employee Retirement Income Security Act*
 3 *of 1974 is amended by inserting after the item relating to*
 4 *section 734 the following new items:*

“PART 8. RULES GOVERNING ASSOCIATION HEALTH PLANS

“801. Association health plans.

“802. Certification of association health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and benefit options.

“806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.

“807. Requirements for application and related requirements.

“808. Notice requirements for voluntary termination.

“809. Corrective actions and mandatory termination.

“810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.

“811. State assessment authority.

“812. Definitions and rules of construction.”.

5 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**
 6 **PLOYER ARRANGEMENTS.**

7 Section 3(40)(B) of the Employee Retirement Income
 8 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—
 9 (1) in clause (i), by inserting after “control
 10 group,” the following: “except that, in any case in
 11 which the benefit referred to in subparagraph (A) con-
 12 sists of medical care (as defined in section 812(a)(2)),
 13 two or more trades or businesses, whether or not in-
 14 corporated, shall be deemed a single employer for any
 15 plan year of such plan, or any fiscal year of such
 16 other arrangement, if such trades or businesses are

1 *within the same control group during such year or at*
2 *any time during the preceding 1-year period,”;*

3 *(2) in clause (iii), by striking “(iii) the deter-*
4 *mination” and inserting the following:*

5 *“(iii)(I) in any case in which the benefit referred*
6 *to in subparagraph (A) consists of medical care (as*
7 *defined in section 812(a)(2)), the determination of*
8 *whether a trade or business is under ‘common control’*
9 *with another trade or business shall be determined*
10 *under regulations of the Secretary applying prin-*
11 *ciples consistent and coextensive with the principles*
12 *applied in determining whether employees of two or*
13 *more trades or businesses are treated as employed by*
14 *a single employer under section 4001(b), except that,*
15 *for purposes of this paragraph, an interest of greater*
16 *than 25 percent may not be required as the minimum*
17 *interest necessary for common control, or*

18 *“(II) in any other case, the determination”;*

19 *(3) by redesignating clauses (iv) and (v) as*
20 *clauses (v) and (vi), respectively; and*

21 *(4) by inserting after clause (iii) the following*
22 *new clause:*

23 *“(iv) in any case in which the benefit referred to*
24 *in subparagraph (A) consists of medical care (as de-*
25 *defined in section 812(a)(2)), in determining, after the*

1 *application of clause (i), whether benefits are pro-*
 2 *vided to employees of two or more employers, the ar-*
 3 *rangement shall be treated as having only one par-*
 4 *ticipating employer if, after the application of clause*
 5 *(i), the number of individuals who are employees and*
 6 *former employees of any one participating employer*
 7 *and who are covered under the arrangement is greater*
 8 *than 75 percent of the aggregate number of all indi-*
 9 *viduals who are employees or former employees of*
 10 *participating employers and who are covered under*
 11 *the arrangement,”.*

12 **SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
 13 **CIATION HEALTH PLANS.**

14 *(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL*
 15 *MISREPRESENTATIONS.—Section 501 of the Employee Re-*
 16 *tirement Income Security Act of 1974 (29 U.S.C. 1131) is*
 17 *amended by adding at the end the following new subsection:*

18 *“(c) Any person who willfully falsely represents, to any*
 19 *employee, any employee’s beneficiary, any employer, the*
 20 *Secretary, or any State, a plan or other arrangement estab-*
 21 *lished or maintained for the purpose of offering or pro-*
 22 *viding any benefit described in section 3(1) to employees*
 23 *or their beneficiaries as—*

24 *“(1) being an association health plan which has*
 25 *been certified under part 8;*

1 “(2) *having been established or maintained*
2 *under or pursuant to one or more collective bar-*
3 *gaining agreements which are reached pursuant to*
4 *collective bargaining described in section 8(d) of the*
5 *National Labor Relations Act (29 U.S.C. 158(d)) or*
6 *paragraph Fourth of section 2 of the Railway Labor*
7 *Act (45 U.S.C. 152, paragraph Fourth) or which are*
8 *reached pursuant to labor-management negotiations*
9 *under similar provisions of State public employee re-*
10 *lations laws; or*

11 “(3) *being a plan or arrangement described in*
12 *section 3(40)(A)(i),*

13 *shall, upon conviction, be imprisoned not more than 5*
14 *years, be fined under title 18, United States Code, or both.”.*

15 **(b) CEASE ACTIVITIES ORDERS.**—*Section 502 of the*
16 *Employee Retirement Income Security Act of 1974 (29*
17 *U.S.C. 1132) is amended by adding at the end the following*
18 *new subsection:*

19 “(n) **ASSOCIATION HEALTH PLAN CEASE AND DESIST**
20 **ORDERS.**—

21 “(1) **IN GENERAL.**—*Subject to paragraph (2),*
22 *upon application by the Secretary showing the oper-*
23 *ation, promotion, or marketing of an association*
24 *health plan (or similar arrangement providing bene-*

1 *fits consisting of medical care (as defined in section*
2 *733(a)(2))) that—*

3 *“(A) is not certified under part 8, is subject*
4 *under section 514(b)(6) to the insurance laws of*
5 *any State in which the plan or arrangement of-*
6 *fers or provides benefits, and is not licensed, reg-*
7 *istered, or otherwise approved under the insur-*
8 *ance laws of such State; or*

9 *“(B) is an association health plan certified*
10 *under part 8 and is not operating in accordance*
11 *with the requirements under part 8 for such cer-*
12 *tification,*

13 *a district court of the United States shall enter an*
14 *order requiring that the plan or arrangement cease*
15 *activities.*

16 *“(2) EXCEPTION.—Paragraph (1) shall not*
17 *apply in the case of an association health plan or*
18 *other arrangement if the plan or arrangement shows*
19 *that—*

20 *“(A) all benefits under it referred to in*
21 *paragraph (1) consist of health insurance cov-*
22 *erage; and*

23 *“(B) with respect to each State in which the*
24 *plan or arrangement offers or provides benefits,*
25 *the plan or arrangement is operating in accord-*

1 “(d) *CONSULTATION WITH STATES WITH RESPECT TO*
2 *ASSOCIATION HEALTH PLANS.*—

3 “(1) *AGREEMENTS WITH STATES.*—*The Sec-*
4 *retary shall consult with the State recognized under*
5 *paragraph (2) with respect to an association health*
6 *plan regarding the exercise of—*

7 “(A) *the Secretary’s authority under sec-*
8 *tions 502 and 504 to enforce the requirements for*
9 *certification under part 8; and*

10 “(B) *the Secretary’s authority to certify as-*
11 *sociation health plans under part 8 in accord-*
12 *ance with regulations of the Secretary applicable*
13 *to certification under part 8.*

14 “(2) *RECOGNITION OF PRIMARY DOMICILE*
15 *STATE.*—*In carrying out paragraph (1), the Sec-*
16 *retary shall ensure that only one State will be recog-*
17 *nized, with respect to any particular association*
18 *health plan, as the State with which consultation is*
19 *required. In carrying out this paragraph—*

20 “(A) *in the case of a plan which provides*
21 *health insurance coverage (as defined in section*
22 *812(a)(3)), such State shall be the State with*
23 *which filing and approval of a policy type of-*
24 *fered by the plan was initially obtained, and*

1 “(B) in any other case, the Secretary shall
2 take into account the places of residence of the
3 participants and beneficiaries under the plan
4 and the State in which the trust is maintained.”.

5 **SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
6 **RULES.**

7 (a) *EFFECTIVE DATE.*—The amendments made by this
8 Act shall take effect 1 year after the date of the enactment
9 of this Act. The Secretary of Labor shall first issue all regu-
10 lations necessary to carry out the amendments made by this
11 Act within 1 year after the date of the enactment of this
12 Act.

13 (b) *TREATMENT OF CERTAIN EXISTING HEALTH BEN-*
14 *EFITS PROGRAMS.*—

15 (1) *IN GENERAL.*—In any case in which, as of
16 the date of the enactment of this Act, an arrangement
17 is maintained in a State for the purpose of providing
18 benefits consisting of medical care for the employees
19 and beneficiaries of its participating employers, at
20 least 200 participating employers make contributions
21 to such arrangement, such arrangement has been in
22 existence for at least 10 years, and such arrangement
23 is licensed under the laws of one or more States to
24 provide such benefits to its participating employers,
25 upon the filing with the applicable authority (as de-

1 *defined in section 812(a)(5) of the Employee Retirement*
2 *Income Security Act of 1974 (as amended by this sub-*
3 *title)) by the arrangement of an application for cer-*
4 *tification of the arrangement under part 8 of subtitle*
5 *B of title I of such Act—*

6 *(A) such arrangement shall be deemed to be*
7 *a group health plan for purposes of title I of*
8 *such Act;*

9 *(B) the requirements of sections 801(a) and*
10 *803(a) of the Employee Retirement Income Secu-*
11 *rity Act of 1974 shall be deemed met with respect*
12 *to such arrangement;*

13 *(C) the requirements of section 803(b) of*
14 *such Act shall be deemed met, if the arrangement*
15 *is operated by a board of directors which—*

16 *(i) is elected by the participating em-*
17 *ployers, with each employer having one*
18 *vote; and*

19 *(ii) has complete fiscal control over the*
20 *arrangement and which is responsible for*
21 *all operations of the arrangement;*

22 *(D) the requirements of section 804(a) of*
23 *such Act shall be deemed met with respect to*
24 *such arrangement; and*

1 (E) *the arrangement may be certified by*
2 *any applicable authority with respect to its oper-*
3 *ations in any State only if it operates in such*
4 *State on the date of certification.*

5 *The provisions of this subsection shall cease to apply*
6 *with respect to any such arrangement at such time*
7 *after the date of the enactment of this Act as the ap-*
8 *plicable requirements of this subsection are not met*
9 *with respect to such arrangement.*

10 (2) *DEFINITIONS.—For purposes of this sub-*
11 *section, the terms “group health plan”, “medical*
12 *care”, and “participating employer” shall have the*
13 *meanings provided in section 812 of the Employee*
14 *Retirement Income Security Act of 1974, except that*
15 *the reference in paragraph (7) of such section to an*
16 *“association health plan” shall be deemed a reference*
17 *to an arrangement referred to in this subsection.*

Union Calendar No. 23

115TH CONGRESS
1ST Session

H. R. 1101

[Report No. 115-43]

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

MARCH 17, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed