



John W. McClelland, Ph.D.
Vice President, Government Affairs & Chief Economist

February 28, 2018

777 6th St. NW, Suite 510
Washington, D.C. 20001
202-289-4460 Phone
202-289-4461 Fax
John.McClelland@ararental.org

ATTN: RIN 1210-AB85
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655, U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The American Rental Association (ARA) is the international trade association for owners of equipment rental businesses and manufacturers and suppliers of rental equipment. The current membership includes more than 5,000 members operating more than 10,000 rental locations. Headquartered in Moline, Illinois, ARA has been in continuous operation since 1955.

ARA members are located throughout all 50 U.S. states, in all Congressional districts, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, as well as in Canada and more than 30 countries worldwide. As a membership organization, our program work reflects our members' needs and depends upon volunteer involvement and leadership.

ARA offers membership to rental store operators and companies that supply or manufacture equipment for the rental industry. We are a member-driven and member-dedicated association that is committed to providing our members with a wide array of products – resources that help them run a safer, more efficient and more profitable operation. ARA members can be found throughout the United States renting equipment in densely as well as sparsely populated areas.

We commend the Department's efforts to work to expand access to health insurance for association members like ours, through Association Health Plans (AHPs). ARA has advocated for AHPs for many years through its annual legislative fly-in and participation in the various healthcare coalitions with other trade associations.

Most of ARA's member businesses are small businesses that continue to be negatively impacted by ever-increasing healthcare costs, if they are still able to offer health insurance at all. By being able to participate in AHPs, membership organizations like ARA will allow these businesses to aggregate the workforce and take advantage of the flexibility and lower costs that are currently available only to employers who participate in the large-group market or are self-insured. Properly designed AHPs would offer small rental businesses the ability to offer more competitive benefits, allowing them to compete with large employers to retain and recruit employees. This is crucial in a job market in which skilled workers are in desperately short supply.

The economies of scale that an AHP could provide would allow ARA members and their employees to offer more comprehensive coverage than members could afford on their own while creating realistic risk pooling and minimize compliance costs. AHPs offer an excellent way for smaller employers to provide employee health benefits on an equal footing with larger employers.

ARA also believes that it is important that AHPs should be offered to employers with a common nexus, such as equipment rental, to discourage newly formed organizations that may only be organized to offer thinly capitalized plans with minimal benefits. Such plans may improperly discriminate against older sicker employees causing adverse selection. Requiring plans that are fully capitalized and required to cover all employees with full benefits will dispel the skepticism that may exist about AHPs from the past when bad actors offered thinly capitalized plans that collected premiums but did not pay when claims came due.

We recommend that a legitimate, established association be defined as one which is established as a non-profit with a federal tax exemption, provides substantial activities and programs beyond health insurance, that members share a common industry, cause or profession and one that is participated in and governed by the actual members of the trade association. The ARA has been in continuous existence for 62 years, offering an array of products and services with a long-established relationship with our members who control the governance of the association.

While we greatly appreciate the efforts of the Department in promulgating this NPRM, we have concerns with some of the proposals for the new regulations.

The preemption of state health insurance laws and regulations must be clearly stated in the proposed rule. The viability of an AHP will be severely constrained if the AHP must comply with the variety of differing regulations in each state. While there are many equipment rental companies doing business in highly populated areas, there are also many doing business in very sparsely populated areas and others that do business across many state lines. To effectively serve all these populations under the proposal, ARA may have to create several different AHPs with different costs thereby increasing compliance costs and requirements. This severely hampers the economies of scale needed to bring down costs and ensure meaningful benefits to all participants. To be clear, ARA may have to establish multiple AHPs for our members because underwriting insurance companies with suitable products do not operate in all 50 states and the District of Columbia. Without preemption of state insurance regulations, there is the real likelihood that ARA would have to establish multiple AHPs using multiple underwriting companies to serve all of our members. This would be prohibitively expensive while potentially creating significant disparities in the benefits offered to ARA members.

We believe the Department has the authority necessary to design a regulatory structure wherein states would be allowed to exert their traditional consumer protection rules without obstructing ERISA's purpose of promoting employee benefit by imposing a uniform interstate standard of conduct. Fully insured coverage could be 'situated' in a state and the benefit mandates applicable in the situs state would apply to the health coverage offered in various states around the country. We also believe the ERISA statute definition of "group" of employers needs to be expanded to include self-employed individuals with no employees.

We also encourage the Department to distinguish an AHP from a multiple employer welfare arrangement (MEWA) which would also subject a self-insured AHP to the various states' MEWA statutes. Again, to garner the scale necessary to provide high quality, affordable healthcare to all those in the equipment rental industry across the country, the AHP cannot be subject to individual state health insurance mandates like some MEWAs are.

Associations, like the American Rental Association, exist to improve the industries and professionals they serve; ARA's stated core purpose is "to promote the success of our members and advance the growth of the equipment rental industry." We have been successfully doing that for 62 years and can be counted on to continue to do what's right for our members. We appreciate this opportunity to comment and are willing to assist in this effort in any way we can.

Sincerely,

A handwritten signature in black ink that reads "John W. McClelland". The signature is written in a cursive, flowing style.

John W. McClelland
Vice President, Government Affairs
& Chief Economist