



March 6, 2018

VIA ELECTRONIC SUBMISSION (www.regulations.gov)

Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
200 Constitution Ave, NW, Suite S-2524
Washington, DC 20210

Re: RIN 1210-AB85: Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans

Dear Assistant Secretary Rutledge:

American Trucking Associations (“ATA”) welcomes the opportunity to comment on the Employee Benefits Security Administration’s Proposed Rule regarding the Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans (“AHP(s)”) published on January 5, 2018 (the “Proposed Rule”).

ATA is the national association of the trucking industry, comprising motor carriers, state trucking associations, and national trucking conferences, and created to promote and protect the interests of the national trucking industry. Our direct membership includes approximately 1,800 trucking companies and industry suppliers of equipment and services; and in conjunction with its affiliated organizations, ATA represents over 30,000 companies of every size, type, and class of motor carrier and supplier operation. The motor carriers and suppliers represented by ATA haul a significant portion of the freight transported by truck in the United States and operate in all 50 states.

ATA commends the Department of Labor (the “Department”) on its efforts to make affordable health care benefits available to more Americans, notably small businesses and sole proprietors (“Working Owner(s)”). We further commend the Department on its proposal to make such benefits available across state lines so that employers and employees can select the plan best suited to their needs. That said, we do believe some changes would enhance the Proposed Rule and offer the following comments and suggestions:

“Commonality of Interest”

The Proposed Rule includes a “Commonality of Interest” test that is aimed to include the definition currently in use by the Department in its sub-regulatory guidance. ATA commends the Department for suggesting a broadly defined methodology for determining if

there is commonality of interest that is based on current guidance. We believe, however, that such a methodology may not be broad enough to apply to large trade associations or groups, which cater to all professions and services supporting an industry such as ATA, and as such request that the Department explicitly recognize a commonality of interest between employer members in a trade or business and those who support the trade or business to ensure that associations like ours are able to offer coverage to all employer members. We further propose that the Department add additional categories that it has mentioned in previous sub-regulatory guidance when discussing commonality of interest. Specifically, we would recommend that the test recognize a commonality of interest between employer members where there is a shared economic interest, a genuine organizational relationship, organized cooperation, or a common purpose.

We would further recommend the Department examine the possibility of including all organizations designated as “non-profit” under current Internal Revenue Service guidelines, no matter the relationship between their employer members, as having the requisite commonality of interest for purposes of forming an AHP. We believe that including these additional circumstances under which commonality of interest could be established would promote the Department’s goal of expanding access to affordable health coverage across state lines. By allowing related groups or associations to work together to provide coverage to members, the Department also eases the regulatory burden by allowing these groups to focus less on things like multiple reports and filings for each individual employer member, and more on providing quality and affordable coverage.

Dual Treatment of Working Owners as Employers and Employees

ATA supports the Department’s efforts to expand coverage to self-employed workers as many motor carriers are self-employed. We believe that certain restrictions in the Proposed Rule would limit a Working Owner’s ability to purchase affordable coverage through an association or group of which they are a member, thus hindering the Department in achieving its goal of promoting access to affordable coverage. Specifically, a Working Owner should be eligible to participate in an AHP regardless of whether they are eligible for coverage through an employer or spouse. In the interest of promoting choice, we believe an individual, including Working Owners, should be permitted to choose the best plan to fit their needs, whether that is through their employer, spouse, or an AHP.

Operation Across State Lines

Because ATA’s membership is broad and based in all 50 states, ATA is concerned the Proposed Rule does not adequately address the concerns of an AHP that provides coverage to employer members across state lines. We are concerned that the states in which a self-insured AHP provides coverage could subject such a plan to varying or contradictory regulation. This varying or contradictory regulation could cause confusion with regard to administration of a plan, thus detracting from the Proposed Rule’s stated goal.

As an organization that has been serving its members for 85 years, we value the relationships we have built with our members through the years. We also understand the skepticism with which many states view self-insured plans given their checkered past. Associations and groups like ATA are keenly aware of the goodwill that takes time to build with their members, and want to ensure that associations or groups are able to offer a quality plan at an affordable price to their members, regardless of where they live. To that end, we believe that the Department should provide clear guidance that would permit a plan that is licensed in one state – and meets that state’s requirements – to make its plan available in other states through a simple state registration process. This could be achieved through certain alternatives to the solvency requirements that many states impose on self-insured plans, which would permit such plans to easily operate across state lines. We believe the Small Business Health Fairness Act of 2017 (H.R. 1101, 115th Congress) (“SBHFA”) provides a useful framework to which the Department could look. Specifically, we believe self-insured plans could be subject to minimum federal requirements similar to those set forth in the SBHFA related to notice, reserves, and solvency.

Absent federal legislation that would provide for standards that would allow flexibility in forming AHPs that can provide coverage across state lines, we urge the Department to exercise its authority under Subsection 544(b)(6)(B) of ERISA and issue a class exemption for self-insured plans. By doing so, the Department would remove obstacles that hinder a plan’s ability to offer coverage across state lines.

Nondiscrimination

ATA agrees with the nondiscrimination provisions included in the Proposed Rule. We believe the Proposed Rule permits flexibility for groups and associations, while ensuring that employer members and their employees are protected. With regard to self-insured AHP’s, ATA requests that the Department explore additional options to provide these plans flexibility – balancing sustainability and solvency for plans, with affordability for patients.

Additional Requirements

We support the Department’s goal of expanding access to affordable coverage and fully agree that all provisions of the Affordable Care Act and other legislation that are applicable to large group health plans, including nondiscrimination provisions, should be followed. Except as stated in this letter, ATA believes that no additional requirements should be placed on AHPs. Because new requirements could lead groups or associations that intended to enter the market to abandon their plans, we hope that any additional requirements the Department may consider beyond those discussed in this letter, the Proposed Rule, or current law, would be carefully reviewed and evaluated, including through notice-and-comment rulemaking, prior to applying them to AHPs.

Grandfathering

Finally, we support the idea of allowing existing AHPs that may not be in compliance with all the requirements in the Proposed Rule to continue to serve their members. We support either a complete exemption from the Proposed Rule for these existing plans or, at the very least, a grace period that allows the plans time to ensure that they are in compliance with the new requirements.

Conclusion

ATA appreciates the opportunity to respond to the Proposed Rule. We are encouraged by the thoughtful nature in which the Proposed Rule was drafted and its stated goals. We welcome the opportunity to provide additional input on the requirements of the Proposed Rule as needed. Thank you for your attention to these comments. If you have any questions concerning these comments or would like to discuss them, please feel free to contact Jennifer L. Hall, General Counsel and Executive Vice President, Legal Affairs, at jhall@trucking.org or (703) 838-1888.

Sincerely

A handwritten signature in black ink, appearing to read "Jennifer L. Hall". The signature is fluid and cursive, with the first name "Jennifer" being the most prominent part.

Jennifer L. Hall
General Counsel & EVP, Legal Affairs