

February 26, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Steven Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretaries Azar, Mnuchin and Acosta:

The undersigned organizations appreciate the opportunity to submit comments in response to the *Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States* issued by President Trump on October 12, 2017. Section 4 of the Executive Order specifically addresses increasing availability of and access to the use of Health Reimbursement Arrangements (HRAs) for employers and their employees. To this end, we strongly urge the Department of Treasury to reverse the Internal Revenue Service (IRS) Notice 2013-54 which wrongly subjects HRAs to the same rules as group health plans and discourages employers from providing this type of valued and valuable benefit to employees.

As you know, the previous administration ruled that HRAs are health plans, subject to certain market rules established by the Affordable Care Act. Because HRAs do not meet these market rules, they trigger outrageous and unsustainable fines on the employers (\$100 per day, per employee – totaling \$36,500 over the course of the year) offering this type of financial assistance for health care costs to their employees. Of course, HRAs do not constitute insurance, but rather to allow tax-preferred resources to purchase insurance and cover other qualified out-of-pocket health spending. Businesses can ill-afford, and should not be expected, to be penalized for providing voluntary assistance to their employees for qualified health care expenses, with or without the coverage of a Qualified Health Plan.

In 2016, through provision 18001 of the 21st Century Cures Act, the law was amended to allow small businesses – those with fewer than 50 full-time employees – to offer an HRA without penalty if certain qualifications are met. This law is a necessary, but partial, legislative fix to an underlying regulatory problem. We encourage the Department of Treasury to fix the underlying problem by reversing the original 2013 guidance issued through the IRS, and allow HRAs to be used more flexibly and by more businesses as was the case prior to the guidance

Thank you for your consideration of our comments in support of the full reversal of the HRA section of the IRS Notice 2013-54 and subsequent regulations by the Departments of Treasury,

Labor and Health and Human Services such as IRS Notice 2015-17 and DOL Technical Release 2013-03.

Sincerely,

National Association of Home Builders
National Association for the Self Employed
National Federation of Independent Businesses
National Retail Federation
WEX Health