



TOPIC: COMMENTS REQUESTED ON PROPOSED HRA RULES

**EXECUTIVE SUMMARY:** THE DEPARTMENTS OF LABOR, TREASURY, AND HEALTH AND HUMAN SERVICES (HHS) HAVE ISSUED PROPOSED RULES THAT WOULD EXPAND THE USE OF HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs) AND PERMIT THEM TO REIMBURSE PREMIUMS FOR INDIVIDUAL HEALTH INSURANCE POLICIES, UNDER CERTAIN CIRCUMSTANCES. THE DEPARTMENTS ARE SOLICITING COMMENTS ON A PROPOSED (1) INDIVIDUAL COVERAGE HRA; (2) EXCEPTED BENEFITS HRA; AND (3) NOTICE 2018-88, WHICH ADDRESSES APPLICATION OF THE AFFORDABLE CARE ACT'S EMPLOYER SHARED RESPONSIBILITY PENALTY TO THESE ACCOUNTS. THE NCCMP REQUESTS INFORMATION FROM MEMBERS BY DECEMBER 7, 2018, SO THAT MEMBER CONCERNS CAN BE INCORPORATED INTO NCCMP COMMENTS.

PURPOSE: SOLICITATION OF COMMENTS  
CATEGORY: AGENCY COMMENTS  
ISSUER: NCCMP  
TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER HEALTH AND WELFARE PLANS  
FOR MORE INFORMATION: [Full Regulations](#)  
[Notice](#)  
SEND COMMENTS TO: [Multi-elert@nccmp.org](mailto:Multi-elert@nccmp.org)  
REFERENCE: VOL. XVIII, ISSUE 13

## **BACKGROUND**

The Departments of Labor (DOL), Health and Human Services (HHS) and Treasury (the Departments) recently issued proposed rules that would expand the use of Health Reimbursement Arrangements (HRAs) and permit them to reimburse premiums for individual health insurance policies, under certain circumstances. The rules were issued in response to President Trump's Executive Order 13813, Promoting Healthcare Choice and Competition Across the United States. Subsequently, the Treasury Department and Internal Revenue Service published Notice 2018-88, which clarified how the employer shared responsibility penalty would apply to a large employer that offers such HRAs, and set forth several safe harbors intended to implement the proposed rules. If finalized, the proposed rules would apply to plans for plan years beginning on or after January 1, 2020. The Departments are soliciting public comments on both the rules and the safe harbors, which are due on or before December 28, 2018.

### **Highlights of the Proposed Rules**

An HRA is an account-based plan funded only by plan contributions. Money in the account can be used to reimburse participants, spouses and dependent children for various out-of-pocket expenses up to a maximum dollar amount set by the plan. Under the Affordable Care Act, HRAs typically may only be offered if integrated with group health plan coverage. The proposed rules would create two new types of HRAs; an Individual Coverage HRA and an Excepted Benefits HRA.

#### **Individual Coverage HRA**

The proposed HRA rules would allow plan sponsors to offer an HRA that reimburses participants for premiums for individual health insurance (either on the federal Marketplace/state Exchanges or in the individual insurance market outside the Marketplace/Exchange) as well as for other unreimbursed medical expenses.

The plan sponsor may not offer participants a choice between traditional group health coverage and the Individual Coverage HRA. However, the plan sponsor could offer a group health plan to one class of participants and an Individual Coverage HRA to other groups. Classes of participants would be defined as full-time, part-time, seasonal, collectively bargained, those who have not satisfied a waiting period, those under age 25, non-resident aliens with no US-based income, and participants whose primary site of employment is in the same "rating" area (based on rating areas established for the Marketplace/Exchange). Individual Coverage HRAs would have to be offered to all participants within a designated class on the same terms. However, the amount a plan contributes to an Individual Coverage HRAs could be higher for older participants and could also vary based on family size.

The plan must have reasonable procedures in place to verify that participants (and their dependents) are actually enrolled in an individual market plan. Following initial verification, coverage substantiation must be provided with each request for reimbursement of medical

expenses. In general, plans may rely on an attestation of coverage by the participant. The plan would have to notify individuals about the terms of the HRA annually, at least 90 days before the beginning of the plan year. Individuals would have the right to opt out of the HRA at least annually.

### **Excepted Benefits HRA**

The Departments also proposed that a plan may offer an Excepted Benefits HRA that reimburses general medical expenses, including excepted benefit premiums, out-of-pocket medical expenses, COBRA premiums, and short-term limited duration insurance (STLDI) premiums, but not other group or individual market health insurance premiums. This HRA would be considered an excepted benefit and could be offered even if a participant is not enrolled in the plan sponsor's group health plan. Under the proposed rules, four requirements must be satisfied for an HRA to qualify as an excepted benefit HRA: the maximum annual contribution is \$1,800 (adjusted for inflation) not including carryover amounts; the participant must be offered group health plan coverage by the plan sponsor, although they do not need to enroll in it; the participant may not be offered an Individual Coverage HRA, and the terms and conditions of the HRA must be the same for all similarly situated participants.

Comments on the proposal must be filed on or before December 28, 2018.

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*We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.*

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*If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at [nccmp@nccmp.org](mailto:nccmp@nccmp.org).*

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