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PO Box 7604 – Ben Franklin Station
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<http://www.regulations.gov>

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide comments to the Internal Revenue Service, and Departments of the Treasury, Labor, and Health and Human Services on the Notice of Proposed Rulemaking (NPRM) on Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit (78 Fed. Reg. 25909). As the Administration considers finalizing this NPRM, we strongly encourage you to revise the final rules to account for the full value of employer-sponsored wellness programs.

RILA, the trade association of the world's largest and most innovative retail companies, product manufacturers, and service suppliers, promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. RILA members offer health coverage to millions of American workers and their families, and are leaders in benefits design by customizing plans to meet their workforces' specific needs.

As noted in our January 24 comment letter on the proposed rules regarding employer-sponsored wellness programs and our March 18 comment letter on the NPRM for the employer shared responsibility, retailers offer quality and affordable health care to their employees and families, and are leaders in benefits design by customizing plans to meet their workforces' specific needs. Many retail employers encourage their employees to participate in voluntary wellness programs, and appreciate that a foundation of healthy habits can last a lifetime. Retailers have embraced the idea that investing in a healthy workforce today not only lays the foundation for a healthier society but also ensures the development of a more productive workforce which is able to enjoy a higher quality of life. Retail employers already offer employees robust wellness benefits that include programs such as: weight loss; smoking cessation; incentives to see a primary care physician; diabetes control; nutritional/healthy eating; store discounts on healthy foods; gym discounts; group counseling sessions; and store gift card incentives for enrolling and participating in wellness programs.

The NPRM only permits employers to take into account only the value of tobacco cessation programs in determining both affordability and minimum value under Internal Revenue Code 4980H. Disregarding employers' contributions to wellness programs (other than tobacco cessation) undermines the progress employers have made to encourage preventive health care and to support healthy lifestyle choices, both of which improve employee health outcomes and reduce overall health costs for employers and employees.

RILA, through its leadership of the Employers for Flexibility in Health Care (E-Flex) Coalition, provided initial comments on the method of determining minimum value and affordability of employer-sponsored plans in the comment letters dated October 31, 2012, June 11, 2012, and March 15, 2013. Consistent with our previous letters, we continue to urge the Administration to recognize that wellness programs such as a health-risk assessment are a critical component of an employee's overall benefit package and that employer contributions to these wellness programs should be recognized under IRC 4980H. Employers have been actively engaged for years in developing innovative approaches to encourage preventive healthcare to improve employee health outcomes, and to lower health care costs and premiums. If the value of these benefits is not appropriately captured, many employers may be forced to scale back their investment in these important benefits, which are increasingly valued by employers and employees alike.

The Affordable Care Act (ACA) recognizes the value of wellness programs by increasing the size of the allowable incentive for employer-sponsored wellness programs, allowing for preventive care without cost sharing, and providing federal funding for other wellness programs. The failure of the NPRM in not taking into account employers' contributions to all wellness plans in these regulations is contrary to the intent of the ACA.

Furthermore, the insurance market rules that limit rating only to tobacco use do not provide sufficient support for the regulation's proposal to disregard employers' contributions to other wellness programs besides tobacco cessation. Insurer rating rules are distinct in purpose and participant impact. Insurer rating rules are used to set insurance premiums for an employer's group. Employer-sponsored wellness programs are designed to improve individual participant health.

Finally, giving employers credit for contributions only to tobacco cessation programs for purposes of IRC 4980H, is unnecessary given the Administration's recently issued final regulations on nondiscriminatory wellness programs that provide even stronger protections for employees and dependents. Among other things, the protections provide employees with alternatives to satisfy wellness program criteria and to make it easier for employees to qualify for wellness incentives.

The proposed minimum value regulations include a temporary transition rule for plan years beginning before January 1, 2015, permitting employers to measure affordability and minimum value as if all employees have met an employer's wellness program criteria. RILA and the E-Flex Coalition urges the Administration to recognize the value of employer-sponsored wellness programs by applying the approach outlined in the transition rule to all plan years in the final rule, rather than providing such relief only on a temporary basis.

Employer-sponsored coverage is the crown jewel of the American healthcare system. RILA is committed to ensuring employer-sponsored health coverage remains a viable option for the 170 million Americans receiving coverage today. RILA and the E-Flex Coalition look forward to continuing to provide constructive business operations information and policy recommendations to the White House and the Departments as the ACA regulatory development and implementation process proceeds.

Please direct questions or requests for further information about this comment letter to Christine Pollack, Vice President of Government Affairs, with the Retail Industry Leaders Association (RILA) at Christine.pollack@rila.org or 703-600-2021.