

United States Senate

WASHINGTON, DC 20510

September 23, 2020

Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave NW
Washington, D.C. 20224

Michael Rigas
Acting Director
United States Office of Personnel
Management
1900 E Street NW
Washington, D.C. 20415

Dear Commissioner Rettig and Acting Director Rigas,

In the midst of an ongoing global pandemic, we write today with deep concern over the continued inflexibility of Health Flexible Spending Accounts (FSAs) for workers, including those in the federal government.

In the absence of guidance from the Internal Revenue Service (IRS), we understand that some Health FSA administrators require workers to submit a letter of medical necessity to receive reimbursement for masks and gloves through an FSA and that other administrators do not. The Centers for Disease Control and Prevention (CDC) first recommended masks be worn in April 2020 to protect everyone against the spread of a specific disease—the coronavirus. In reliance on the CDC’s advice and other medical experts, as of August, 34 states, the District of Columbia, and Puerto Rico have now issued mask requirements for their residents.¹ To require anyone to seek a letter of medical necessity, potentially requiring them to enter a doctor’s office or otherwise come into close contact with strangers, for reimbursement of a known tool in fighting the coronavirus epidemic is irresponsible and harmful. We request that IRS clarify that masks and gloves are eligible for reimbursement from FSAs and that a letter of medical necessity is not required. We also ask that the Office of Personnel Management (OPM) immediately remove this requirement for purposes of Health FSAs for federal workers and deem masks and gloves reimbursable FSA purchases, without a letter of medical necessity.

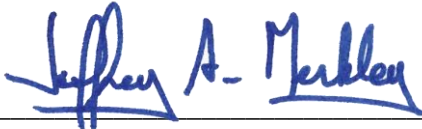
We appreciate the guidance that IRS has issued to date on Health FSAs in Notices 2020-29 and 2020-33 and the actions that OPM has taken to revise the federal FSA program to incorporate that guidance. However, we encourage OPM to expand the window during which federal workers can make mid-year changes to elections (which ended on August 29, 2020). We also encourage IRS to extend the carryover of unused amounts in FSAs for all workers beyond the December 31, 2020 deadline in Notice 2020-29. Under Notice 2020-33, unused amounts after this deadline are subject to a \$550 carryover limit. At this time of economic uncertainty, when there is no clear trajectory for our public health, workers and their families need to be able to save for future health care costs as much as possible. To that end, we ask that you allow for unlimited rollover of unused Health FSA amounts for plan years ending in 2020 to December 31, 2021, even if the worker has not re-enrolled in the employer’s Health FSA.

Thank you for your attention to these requests. We know American families struggling with the coronavirus and other health issues will face health bills beyond what they have saved in their

¹ Marisa Fernandez, “The States Where Face Coverings Are Mandatory,” Axios, August 4, 2020, <https://www.axios.com/states-face-coverings-mandatory-a0e2fe35-5b7b-458e-9d28-3f6cdb1032fb.html>.

Health FSAs. We must give them every opportunity to succeed during this trying time. Increased flexibility through FSAs is a small but necessary start.

Sincerely,

Handwritten signature of Jeffrey A. Merkley in blue ink, written over a horizontal line.

Jeffrey A. Merkley
United States Senator

Handwritten signature of Ron Wyden in blue ink, written over a horizontal line.

Ron Wyden
United States Senator