



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

November 21, 2019

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Dear _____ :

I am responding to your letter dated August 23, 2019, sent to the Internal Revenue Service (IRS) Deputy Commissioner, Tax Exempt and Governmental Entities, regarding enrollment in a dependent care flexible spending arrangement (FSA) under a cafeteria plan subject to section 125 of the Internal Revenue Code. You expressed concern that a participant attempted to enroll in your _____ service due to a “disrupted or unforeseeable child care environment,” and was unable to do so because the enrollment did not occur during the plan’s open enrollment period.

Generally, the terms of a cafeteria plan must provide that employees elect benefits before the beginning of the plan year (period of coverage), and that the employees cannot change their elections during the period of coverage. Under Treasury Regulation section 1.125-4(f), a plan may, but is not required to, adopt provisions that allow an employee to revoke an election during a period of coverage and to make a new election for the remaining period of coverage if the participant experiences a significant change in coverage, or a significant increase or decrease in the cost of coverage. For example, if an employee has a significant curtailment of coverage that is considered a loss of coverage, a plan may permit the employee to revoke his or her election and to elect to receive other coverage on a prospective basis under another benefit option that provides similar coverage, or to drop coverage if a similar benefit option is not available.

A plan is not required to permit an employee to revoke or make a new election outside of the enrollment period if the employee experiences a significant change in coverage or a significant increase or decrease in the cost of coverage. In addition, the plan must be operated in accordance with its terms. See Treasury Regulation section

GENIN-122965-19

1.125-1(c)(7). If a participant is unable to make a new election outside of the enrollment period, it may be because under the terms of the plan the election is not permitted.

I hope this information is helpful. If you have additional questions, please contact me or _____ at _____.

Sincerely,

Denise Trujillo
Branch Chief, Health and Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)