



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Lizzie Fletcher  
Member, U.S. House of Representatives  
5599 San Felipe Road, Suite 950  
Houston, TX 77056

Dear Representative Fletcher:

I am responding to your inquiry dated November 24, 2020, on behalf of your constituent, \_\_\_\_\_ explained that her employer terminated her employment, and that the remaining balance in her health flexible spending arrangement (health FSA) under a Section 125 cafeteria plan was forfeited because she is not eligible for continuation coverage under the Consolidated Omnibus Reconciliation Act (COBRA). She asked for clarification of existing IRS guidance about health FSAs. \_\_\_\_\_ also asked if her 2019 health FSA carryover amounts are available for reimbursement in 2020.

While I cannot respond to the details of \_\_\_\_\_ situation specifically, I can provide general information about Treasury Regulations and other IRS guidance as they relate to COBRA continuation coverage and health FSAs.

Section 54.4980B-2, Q&A-8(e) of the Treasury Regulations provides that a health FSA is not required to provide COBRA continuation coverage for the plan year in which a qualifying event occurs except in certain circumstances. For example, COBRA continuation coverage is required if a participant experiences a qualifying event and as of the date of the qualifying event the amount the participant may receive as a reimbursement for medical care from their health FSA for the rest of the plan year exceeds the amount the FSA may require to be paid for the COBRA continuation coverage for the rest of that plan year. Notice 2015-87, 2015-52 IRB 889, clarifies that carryover amounts are considered when determining eligibility for COBRA continuation coverage for a health FSA.

If COBRA continuation coverage is available, the amount the participant may be able to receive as a reimbursement for medical care following termination of employment is generally:

- The carryover amount plus the amount of the health FSA contribution elected for the plan year, minus
- The amount the plan has reimbursed the employee as of the date of the qualifying event.

The amount that a participant may be required to pay for COBRA continuation coverage for the rest of the year does not include the carryover amount and is:

- The amount of the health FSA contribution elected for the plan year, minus
- The amount contributed to the health FSA as of the date of the qualifying event.

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

Sincerely,

Denise Trujillo  
Branch Chief, Health & Welfare  
(Employee Benefits, Exempt Organizations,  
and Employment Taxes)