



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Steve Stivers
Member, U.S. House of Representatives
3790 Municipal Way
Hilliard, OH 43026

Attention:

Dear Representative Stivers:

I am responding to your inquiry dated April 20, 2020, on behalf of your constituent, _____, about the rules for submitting claims under a dependent care flexible spending arrangement (FSA). She asked if the Internal Revenue Code (Code) or Treasury Regulations provide a hardship exception for the late submission of dependent care FSA claims for reimbursement.

The IRS does not have authority, based on hardship or other reasons, to change the plan sponsor's deadline for submitting a claim after the plan year ends.

_____ explained that she contributed \$5,000 to her dependent care FSA in 2018 through pre-tax salary reduction contributions. However, because she did not timely submit a reimbursement claim for the \$5,000 dependent care expenses that she incurred in 2018, the FSA administrator denied the claim when she submitted it in 2019.

The Code and the Treasury Regulations regarding dependent care FSAs do not specify deadlines for submitting claims, although a plan is permitted to include a run out period after the end of the plan year during which a participant can submit a claim for reimbursement and can provide a deadline for submitting a claim for reimbursement. See, Proposed Treasury Regulation Section 1.125-1(f).

The plan sponsor has sole discretion to determine the time for submitting claims after the end of the plan year. The plan document should specify the time frame employees must follow to submit claims after the end of the plan year.

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

Sincerely,

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