Dear Senator Hassan:

I am responding to your inquiry dated June 29, 2020, on behalf of your constituent, [name redacted]. She explained she will have unused amounts in her dependent care flexible spending arrangement (FSA) under a Section 125 cafeteria plan because her children’s summer camp is not open due to COVID-19. She explained that she has stopped making contributions to her dependent care FSA and asked if there is an exception that would allow a refund of her unreimbursed dependent care FSA contributions.

It appears that [name redacted]’s employer has used the relief provided in Notice 2020-29 to allow her to revoke her dependent care FSA election. However, this relief does not modify the rule that an employee cannot receive amounts from a dependent care FSA other than as reimbursements for dependent care expenses.

Notice 2020-29 allows (but does not require) an employer to amend a Section 125 cafeteria plan to give employees increased flexibility to make mid-year election changes to their dependent care FSAs during 2020. Specifically, employers may amend a Section 125 cafeteria plan to allow employees to revoke an election, make a new election, or decrease or increase an existing election for a dependent care FSA.
prospectively. The Notice also allows an employer to amend a Section 125 cafeteria plan to extend the period for incurring claims that may be reimbursed by a dependent care FSA to the end of 2020. Notice 2020-29 is available on the IRS.gov website at www.irs.gov/pub/irs-drop/n-20-29.pdf.

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

Sincerely,

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