



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Doug Lamborn
Member, U.S. House of Representatives
1125 Kelly Johnson Boulevard, Suite 330
Colorado Springs, CO 80920

Attention:

Dear Representative Lamborn:

I am responding to your inquiry dated December 28, 2020, on behalf of your constituent, . asked which federal agency enforces the rules for employee tax-favored benefits—and specifically the rules applicable to health Flexible Spending Arrangements (health FSAs) under Section 125 of the Internal Revenue Code (Code).

The Treasury Department and the Internal Revenue Service (IRS), the Department of Labor (DOL), and the Department of Health and Human Services (HHS) have issued rules and regulations that govern employee benefit plans, including health FSAs. The DOL generally has jurisdiction for plans subject to Title I of the Employee Retirement Income Security Act of 1974 and HHS has jurisdiction for non-federal governmental plans under the Public Health Service Act. The rules governing health FSAs are set forth in the Code and in proposed regulations regarding Section 125 cafeteria plans.¹ Although the IRS, DOL, and HHS enforce the federal health coverage requirements with respect to employee benefit plans, the IRS has jurisdiction regarding the tax provisions applicable to Section 125 cafeteria plans and health FSAs.

More information about health FSAs can be found in IRS Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans, at this link: <https://www.irs.gov/pub/irs-pdf/p969.pdf>.

¹ See *generally* Prop. Treas. Reg. § 1.125-5.

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

Sincerely,

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