



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

OFFICE OF THE CHIEF COUNSEL

March 3, 2021

Number: **2021-0005**
Release Date: 6/25/2021

CONEX-127440-20

UIL: 125.00-00

The Honorable Scott Peters
Member, U.S. House of Representatives
4350 Executive Drive, Suite 105
San Diego, CA 92121

Attention:

Dear Representative Peters:

I apologize for the delay in responding to your inquiry dated November 19, 2020, on behalf of your constituent, . explained that he terminated employment in July 2020, and the remaining funds in his health flexible spending arrangement (health FSA) under a Section 125 cafeteria plan were forfeited in October 2020 following the end of an extended period for incurring medical care expenses.

asked for help restoring his health FSA funds and requested an extended period to incur medical care expenses that could then be reimbursed from his restored account.

While I cannot respond to the details of situation specifically, I can provide general information about Treasury Regulations, guidance, and recent legislation as they may relate to his situation.

Generally, when an individual terminates employment, the individual can continue to participate in a health FSA by electing continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In addition, under Proposed Treasury Regulation Section 1.125-5(c), the "use-or-lose" rule generally restricts the ability to carry over unused amounts remaining in a health FSA at the end of a plan year to a subsequent year. Unused amounts remaining in a health FSA at the end of the plan

year (following any applicable grace period or run-out period for submitting claims) cannot be returned to the employee and must be forfeited. Amounts the employee forfeits under the “use-or-lose” rule may be retained by the employer, and are not paid to the Internal Revenue Service.

However, Congress enacted new provisions in December 2020 relating to health FSAs in response to the COVID-19 public health emergency. Section 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act) provides employers with the option to amend their plans to permit employees to apply unused health FSA amounts to pay for medical care expenses in 2021 and 2022.

The Department of the Treasury and the Internal Revenue Service released Notice 2021-15 on February 18, 2021. Notice 2021-15 provides guidance regarding Section 214 of the Act, including the flexibility for an employer to allow a carryover of unused amounts from the 2020 and 2021 plan years, to extend the permissible period for incurring claims for plan years ending in 2020 and 2021, and to adopt a special rule regarding post-termination reimbursements from health FSAs. Whether to amend a plan to include the flexibility provided by the Act is solely in the discretion of the employer. You can find the notice on IRS.gov at www.irs.gov/pub/irs-drop/n-21-15.pdf

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)