



November 17, 2020

Mr. Michael Desmond
Chief Counsel, Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Mr. Desmond:

On behalf of National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I write urging you to continue the Internal Revenue Service's important work to provide significant flexibility and relief to cafeteria plan holders during COVID-19. With the help of your leadership, the IRS has taken some important steps to address the uncertainty faced by millions of taxpayers during the pandemic and economic downturn. We believe that you can bolster those efforts even further by temporarily allowing dependent care flexible spending arrangement (FSA) holders to use account dollars on virtual learning opportunities for their children.

Last month, Reps. Brad Wenstrup (R-OH), Mike Kelly (R-PA), and Darin LaHood (R-IL) made this request of you and Secretary Mnuchin, writing in part:

...families need assurance that their children can access education and childcare services. Allowing families to use their own hard-earned DCFSA dollars for virtual education is one tool in the toolbox to help families during the public health emergency.

As you continue to give Americans the needed tools to restore their lives during the COVID-19 public health emergency we ask that you issue guidance to allow families to temporarily use their DCFSA dollars on virtual dependent care services for the duration of the public health emergency.¹

We could not agree more. For months, we have worked with Congressional champions like Rep. Wenstrup to advocate for enhanced FSA flexibility during the COVID-19 crisis.² We have also applauded IRS efforts to provide FSA relief administratively, including the agency's temporary changes to mid-year election rules and to its treatment of unused FSA amounts at the end of a plan year.³

¹ Congressman Brad Wenstrup. (October 23, 2020). "Wenstrup Leads Effort to Increase Flexibility for DCFSA Spending." Retrieved from: <https://wenstrup.house.gov/updates/documentsingle.aspx?DocumentID=404452> (Accessed November 9, 2020.)

² Lieber, Ron. "There's Money Stuck in Your Dependent Care Account. Now What?" *The New York Times*, May 9, 2020. Retrieved from: <https://www.nytimes.com/2020/05/09/your-money/dependent-care-account-coronavirus.html> (Accessed November 9, 2020.)

³ Internal Revenue Service. (May 2020). "COVID-19 Guidance Under § 125 Cafeteria Plans and Related to High Deductible Health Plans" (Notice 2020-29). Retrieved from: <https://www.irs.gov/pub/irs-drop/n-20-29.pdf> (Accessed May 27, 2020.)

We humbly ask you to take another step forward on FSA relief by providing dependent care FSA holders with the temporary ability to use account dollars on virtual education and learning opportunities. Tax experts have expressed confidence that the IRS has the legal authority to offer this temporary relief on an administrative basis.⁴ Should the agency believe that for some reason they lack the authority to offer this flexibility through regulations or guidance, we would be eager to work with you and Members of Congress on legislation that resolves this issue.

Thank you for your consideration, and should you have any questions or would like to discuss this further please do not hesitate to reach out to our team at NTU.

Sincerely,

Andrew Lautz
Policy and Government Affairs Manager

CC: The Honorable Steven Mnuchin
The Honorable Charles P. Rettig
The Honorable Brad Wenstrup
The Honorable Mike Kelly
The Honorable Darin LaHood
Mr. Kevin McIver, Chief of Staff for the Office of the Commissioner
Mr. Leonard Oursler, Director for the Office of Legislative Affairs

⁴ van den Berg, David. "Lawmakers' Virtual Dependent Care FSA Request An Easy Fix." *Law360*, November 5, 2020. Retrieved from: https://www.law360.com/tax-authority/federal/articles/1326296/lawmakers-virtual-dependent-care-fsa-request-an-easy-fix?nl_pk=666b01be-6bd5-42c8-a119-87b4d91dc6b4&utm_source=newsletter&utm_medium=email&utm_campaign=tax-authority/federal&read_more=1 (Accessed November 9, 2020.)