

§ 54.4980G–1

funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

Q-5: Must an employer use the same contribution method as described in Q & A-2 and Q & A-4 of this section for all employees for any month during the calendar year?

Q-6: How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

Q-7: If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

Q-8: Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

Q-9: If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

Q-10: If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

Q-11: If an employer makes additional contributions to the HSAs of all comparable participating employees who are eligible to make the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

Q-12: If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

Q-13: What constitutes a reasonable interest rate for purposes of making comparable contributions?

Q-14: How does an employer comply with the comparability rules if an employee has not established an HSA by December 31st?

Q-15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

Q-16: What is the effective date for the rules in Q & A-14 and Q & A-15 of this section?

26 CFR Ch. I (4–1–23 Edition)

§ 54.4980G–5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q-1: If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual, are the contributions subject to the comparability rules?

Q-2: If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA contribution or a percentage of the amount of the employee's HSA contribution (*i.e.*, matching contributions), are the contributions subject to the section 4980G comparability rules?

Q-3: If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA and the employees have the right to elect to make pre-tax salary reduction contributions to their HSAs, are the contributions subject to the comparability rules?

Q-4: May all or part of the excise tax imposed under section 4980G be waived?

[T.D. 9277, 71 FR 43058, July 31, 2006; 71 FR 53967, Sept. 13, 2006, as amended by T.D. 9393, 73 FR 20795, Apr. 17, 2008]

§ 54.4980G–1 Failure of employer to make comparable health savings account contributions.

Q-1: What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

A-1: If an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. See Q & A-1 in § 54.4980G-4 for the definition of comparable contributions. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who are in the same category of employees and who have the same category of high deductible health plan (HDHP) coverage. See sections 4980G(b) and 4980E(d)(3). See section 223(c)(2) and (g) for the definition of an HDHP. See also Q & A-5 in § 54.4980G-3 for the categories of employees and Q & A-2 of this section for the categories of HDHP coverage. But see Q & A-6 in § 54.4980G-3 for treatment of collectively bargained employees and Q & A-1 in § 54.4980G-6 for the rules allowing larger comparable contributions to non-highly compensated employees.

Q-2: What are the categories of HDHP coverage for purposes of applying the comparability rules?

A-2: (a) *In general.* Generally, the categories of coverage are self-only HDHP coverage and family HDHP coverage. Family HDHP coverage means any coverage other than self-only HDHP coverage. The comparability rules apply separately to self-only HDHP coverage and family HDHP coverage. In addition, if an HDHP has family coverage options meeting the descriptions listed in paragraph (b) of this Q & A-2, each such coverage option may be treated as a separate category of coverage and the comparability rules may be applied separately to each category. However, if the HDHP has more than one category that provides coverage for the same number of individuals, all such categories are treated as a single category for purposes of the comparability rules. Thus, the categories of “employee plus spouse” and “employee plus dependent,” each providing coverage for two individuals, are treated as the single category “self plus one” for comparability purposes. See, however, the final sentence of paragraph (a) of Q & A-1 of § 54.4980G-4 for a special rule that applies if different amounts are contributed for different categories of family coverage. See also § 54.4980G-6 for the rules allowing larger comparable contributions to non-highly compensated employees.

(b) *HDHP Family coverage categories.* The coverage categories are—

- (1) Self plus one;
- (2) Self plus two; and
- (3) Self plus three or more.

(c) *Examples.* The rules of this Q & A-2 are illustrated by the following examples:

Example 1. Employer A maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has self-only coverage and family coverage. Thus, the categories of coverage are self-only and family coverage. Employer A contributes \$750 to the HSA of each eligible employee with self-only HDHP coverage and \$1,000 to the HSA of each eligible employee with family HDHP coverage. Employer A’s contributions satisfy the comparability rules.

Example 2. (i) Employer B maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the

HDHP. The HDHP has the following coverage options:

- (A) Self-only;
- (B) Self plus spouse;
- (C) Self plus dependent;
- (D) Self plus spouse plus one dependent;
- (E) Self plus two dependents; and
- (F) Self plus spouse and two or more dependents.

(ii) The self plus spouse category and the self plus dependent category constitute the same category of HDHP coverage (self plus one) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse category of HDHP coverage or the self plus dependent category of HDHP coverage. Likewise, the self plus spouse plus one dependent category and the self plus two dependents category constitute the same category of HDHP coverage (self plus two) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse plus one dependent category of HDHP coverage or the self plus two dependents category of HDHP coverage.

Example 3. (i) Employer C maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has the following coverage options:

- (A) Self-only;
- (B) Self plus one;
- (C) Self plus two; and
- (D) Self plus three or more.

(ii) Employer C contributes \$500 to the HSA of each eligible employee with self-only HDHP coverage, \$750 to the HSA of each eligible employee with self plus one HDHP coverage, \$900 to the HSA of each eligible employee with self plus two HDHP coverage and \$1,000 to the HSA of each eligible employee with self plus three or more HDHP coverage. Employer C’s contributions satisfy the comparability rules.

Q-3: What is the testing period for making comparable contributions to employees’ HSAs?

A-3: To satisfy the comparability rules, an employer must make comparable contributions for the calendar year to the HSAs of employees who are comparable participating employees. See section 4980G(a). See Q & A-3 and Q & A-4 in § 54.4980G-4 for a discussion of HSA contribution methods.

Q-4: How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

A-4: (a) *Computation of tax.* If employer contributions do not satisfy the comparability rules for a calendar

§ 54.4980G-2

year, the employer is subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to HSAs for that period.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-4:

Example. During the 2007 calendar year, Employer D has 8 employees who are eligible individuals with self-only coverage under an HDHP provided by Employer D. The deductible for the HDHP is \$2,000. For the 2007 calendar year, Employer D contributes \$2,000 each to the HSAs of two employees and \$1,000 each to the HSAs of the other six employees, for total HSA contributions of \$10,000. Employer D's contributions do not satisfy the comparability rules. Therefore, Employer D is subject to an excise tax of \$3,500 (35% of \$10,000) for its failure to make comparable contributions to its employees' HSAs.

Q-5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-5: (a) *In general.* §§ 54.6011-2, 54.6151-1 and 54.6071-1(d).

(b) *Effective/applicability date.* The rules in this Q & A-5 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

[T.D. 9277, 71 FR 43058, July 31, 2006, as amended by T.D. 9457, 74 FR 45997, Sept. 8, 2009]

§ 54.4980G-2 Employer contribution defined.

Q-1: Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)?

A-1: No. The comparability rules do not apply to amounts rolled over from an employee's HSA or Archer MSA.

Q-2: If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts?

A-2: No. Section 106(d) provides that amounts contributed by an employer to an eligible employee's HSA shall be treated as employer-provided coverage for medical expenses and are excludible from the employee's gross income up to the limit in section 223(b). After-tax

26 CFR Ch. I (4-1-23 Edition)

employee contributions to an HSA are not subject to the comparability rules because they are not employer contributions under section 106(d).

[T.D. 9277, 71 FR 43058, July 31, 2006]

§ 54.4980G-3 Failure of employer to make comparable health savings account contributions.

Q-1: Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors or self-employed individuals?

A-1: No. The comparability rules apply only to contributions that an employer makes to the HSAs of employees.

Q-2: May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals?

A-2: (a) *Sole proprietor not an employee.* Yes. The comparability rules apply only to contributions made by an employer to the HSAs of employees. Because a sole proprietor is not an employee, the comparability rules do not apply to contributions the sole proprietor makes to his or her own HSA. However, if a sole proprietor contributes to any employee's HSA, the sole proprietor must make comparable contributions to the HSAs of all comparable participating employees. In determining whether the comparability rules are satisfied, contributions that a sole proprietor makes to his or her own HSA are not taken into account.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-2:

Example. In a calendar year, B, a sole proprietor is an eligible individual and contributes \$1,000 to B's own HSA. B also contributes \$500 for the same calendar year to the HSA of each employee who is an eligible individual. The comparability rules are not violated by B's \$1,000 contribution to B's own HSA.

Q-3: Do the comparability rules apply to contributions by a partnership to a partner's HSA?

A-3: (a) *Partner not an employee.* No. Contributions by a partnership to a bona fide partner's HSA are not subject to the comparability rules because the contributions are not contributions by