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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Jeanne Shaheen
United States Senator
340 Central Avenue, Suite 205
Dover, NH 03820

Attention:

Dear Senator Shaheen:

I am responding to your inquiry dated June 22, 2016, on behalf of your constituent, . She wrote about her employer's contribution to her health savings account (HSA). Specifically, wanted to know if her former employer followed the rules for employer HSA contributions.

We cannot provide a definitive position of the IRS on the application of the law to particular facts except as part of the private letter ruling process. However, we can provide the following general information to you and .

Section 4980G of the Internal Revenue Code provides generally that an employer who contributes to the HSA of any employee during a calendar year must make comparable contributions to the HSAs of all comparable participating employees. For this purpose, a comparable contribution means contributions that are the same amount, or which are the same percentage of the annual deductible limit under the high deductible health plan coverage the employees.

The Treasury Regulations addressing the comparability rules and employer HSA contributions provide clarifications on how this rule might apply to (See Treasury Regulations section 54.4980G-1 through -6). First, Treasury Regulation section 54.4980G-5, Q&A-1 provides that the comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. Contributions to an HSA made through a cafeteria plan are subject to the section 125

nondiscrimination rules. (These rules allow contributions in different amounts to different groups of employees as long as the contributions to not discriminate in favor of highly compensated employees.)

It is not clear from the information provided if employer makes its HSA contributions through a section 125 cafeteria plan. If and other employees may make salary reduction contributions to their HSAs through a cafeteria plan, any other employer contributions generally will also be treated as made through a section 125 cafeteria plan. The cafeteria plan nondiscrimination rules also allow different HSA contribution amounts for retirees than active employees.

Second, Treasury Regulation section 54.4980G-3, Q&A 5 provides that, to the extent an employer's contributions are subject to the comparability rules, employees are classified into specific categories for purposes of comparability testing. Under Q&A-5, the exclusive categories for comparability testing includes "former employees," which includes retired employees. Thus, the comparability rules allow employers to make HSA contributions in different amounts (or not at all) to former employees than the contribution amounts the employer makes to the HSAs of full-time or part-time employees.

I hope this information is helpful. If you have any questions, please call at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Tax Exempt and Government Entities)