(3) Correction

A failure of a group health plan shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104–191, title IV, § 402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105–34, title XV, § 1531(b)(2), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 109–135, title IV, § 412(ww), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135 substituted ''plan requirements'' for ''plans requirements''.

1997—Subsec. (a). Pub. L. 105–34, § 1531(b)(2)(A), substituted ''plans'' for ''plan portability, access, and renewability''.

Subsec. (c)(3)(B)(i)(I). Pub. L. 105–34, § 1531(b)(2)(B), substituted ''9832(d)(3)'' for ''9805(d)(3)''.

Subsec. (d)(1). Pub. L. 105–34, § 1531(b)(2)(C), inserted ''(other than a failure attributable to section 9811)'' after ''on any failure''.

Subsec. (d)(3). Pub. L. 105–34, § 1531(b)(2)(D), substituted ''section 9832'' for ''section 9805''.

Subsec. (f)(1). Pub. L. 105–34, § 1531(b)(2)(E), substituted ''section 9832(a)'' for ''section 9805(a)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1531(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

EFFECTIVE DATE

Section 402(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act).''

§ 4980E. Failure of employer to make comparable Archer MSA contributions

(a) General rule

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

(c) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Employer required to make comparable MSA contributions for all participating employees

(1) In general

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

(2) Comparable contributions

(A) In general

For purposes of paragraph (1), the term ''comparable contributions'' means contributions—

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

(B) Part-year employees

In the case of an employee who is employed by the employer for only a portion of the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

(3) Comparable participating employees

For purposes of paragraph (1), the term ''comparable participating employees'' means all employees—

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

(4) Part-time employees

(A) In general

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

(B) Part-time employee

For purposes of subparagraph (A), the term ''part-time employee'' means any employee who is customarily employed for fewer than 30 hours per week.

(e) Controlled groups

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 employer.

(f) Definitions

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104–191, title III, § 301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–147, title IV, § 417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 substituted ''Archer MSA contributions'' for ''medical savings account contributions'' in section catchline.

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

Subsecs. (b), (d)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(D)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (d)(2)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

§ 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements

(a) Imposition of tax

There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered and reasonable diligence exercised

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures

(A) In general

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for tax

The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice requirements for plans significantly reducing benefit accruals

(1) In general

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals).

(2) Notice

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.