MEMO# 31348

August 24, 2018

IRS Approves 401(k) Arrangement Allowing Employer to Contribute "Match" Based on Student Loan Repayments

[31348]

August 24, 2018 TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Approves 401(k) Arrangement Allowing Employer to Contribute "Match" Based on Student Loan Repayments

On August 17, 2018, the Internal Revenue Service (IRS) released a significant new Private Letter Ruling (PLR),[1] approving an arrangement under which an employer will make a contribution to its 401(k) plan on behalf of an employee who makes a student loan repayment—regardless of whether the employee contributes to the 401(k) plan.

The PLR follows increasing concern that employees (younger employees in particular) with considerable student loan debt may be forgoing their employers' matching contributions because their outsized student loan payments make them unable to afford contributing to their 401(k) plans. To address this concern, policymakers have sought to allow employers to make matching contributions to a 401(k) plan on behalf of an employee who made student loan payments but did not contribute to the 401(k) plan.[2] With the new PLR, IRS has approved a similar arrangement for one employer.[3]

Description in PLR of Taxpayer's 401(k) Plan Arrangement

The PLR describes the taxpayer's 401(k) plan—which provides an employer match equal to five percent of an employee's pay—provided that the employee contributes at least two percent of her pay to the plan. The taxpayer described a student loan benefit it planned to offer under the plan. An employee who enrolls in the new program will receive an employer nonelective contribution equal to five percent of her pay for any pay period in which the employee makes a student loan payment of least two percent of her pay.

Employees enrolled in the program would still be permitted to make contributions to the 401(k) plan, but they would not receive matching contributions on those contributions. At the end of the plan year, the taxpayer will make "true-up" matching contributions on behalf of employees in the program who remain employed. For the true-up matching contributions, the taxpayer will contribute five percent of pay for any pay period in which the employee failed to make student loan payment of at least two percent of pay but did make a contribution to the 401(k) plan of at least that amount. The same vesting schedule will apply to both the nonelective contributions and the true-up matching contributions as applies to regular matching contributions under the plan. For purposes of nondiscrimination testing, the true-up matching contributions will be tested with the regular matching contributions, but the nonelective contributions will be tested separately.

IRS's Analysis

IRS confirmed that this arrangement does not violate the contingent benefit prohibition that applies to 401(k) plans.[4] The contingent benefit prohibition requires that no other benefit be conditioned (directly or indirectly) on the employee making contributions to the 401(k) plan.[5] IRS explained its analysis by noting that, under the taxpayer's arrangement, the employer nonelective contributions are conditioned on whether the employee makes a student loan repayment, not on whether the employee makes a 401(k) contribution. Further, because an employee enrolled in this program is still allowed to make 401(k) contributions, the employer's nonelective contribution is not conditioned on whether or not the employee makes a 401(k) contribution.

The IRS expressed no opinion regarding any other aspect of the new program or, more generally, the 401(k) plan.

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endnotes

[1] PLR 201833012, dated May 22, 2018, is available at https://www.irs.gov/pub/irs-wd/201833012.pdf. PLRs are issued to individual taxpayers based on specific sets of facts presented by the taxpayer and can only be relied on by the taxpayer who requested the PLR. PLRs are helpful to others, however, in assessing the IRS's position on how the statute and regulations apply in certain circumstances.

[2] This proposal was included in Senator Ron Wyden's discussion draft entitled the Retirement Improvements and Savings Enhancements (RISE) Act of 2016. *See* ICI Memorandum No. 30464, dated December 8, 2016, available here: https://www.ici.org/my_ici/memorandum/memo30464. Under the RISE Act, an employer can elect to treat student loan payments the same as elective contributions to a 401(k) plan.

[3] While the PLR does not identify the taxpayer who requested the ruling, media reports have noted that the program described appears to be the same as a program announced by Abbott Laboratories earlier this year. See Abbott Laboratories' news release here: http://www.abbott.com/corpnewsroom/leadership/tackling-student-debt-for-our-employees.html.

[4] The ruling is conditioned on the taxpayer's representation that it will not extend any student loans to employees that will be eligible for the program.

[5] *See* Internal Revenue Code section 401(k)(4)(A) and Treas. Reg. section 1.401(k)-1(e)(6).
