IRS APPROVES STUDENT LOAN BENEFIT FEATURE FOR 401(K) PLAN

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We do not regularly report on private letter rulings, but the IRS recently issued a notable private letter ruling (PLR) that apparently opens the door for companies that might want to offer a new type of student loan benefit under their 401(k) plans. The benefit structure that was approved in the PLR involves a nonelective company contribution for employees who need to make student loan repayments and may not be able to defer as much as they would like to their 401(k) plan and potentially lose out on company matching contributions.

Normally, under the 401(k) plan addressed in the PLR, if an eligible employee makes an elective contribution during a payroll period equal to at least 2% of his or her eligible compensation during the pay period (the minimum permitted elective contribution under the Plan), the company makes a *matching* contribution ("regular matching contribution") on behalf of the employee equal to 5% of the employee's eligible compensation during the pay period. Under the new student loan benefit feature approved by the PLR, if an employee who enrolls in the student loan feature of the plan instead makes a student loan repayment (rather than an elective deferral) during a pay period equal to at least 2% of the employee's eligible compensation for the pay period, the company will make an "SLR *nonelective* contribution" (in lieu of a regular matching contribution) as soon as practicable after the end of the year equal to 5% of the employee's eligible compensation for that pay period.

The SLR nonelective contribution is made without regard to whether the employee makes any elective contribution throughout the year. If the employee does not make a student loan repayment for a pay period equal to at least 2% of the employee's eligible compensation, but does make an elective contribution during that pay period equal to at least 2% of the employee's eligible compensation for that pay period, then the company will make a matching contribution as soon as practicable after the end of the plan year equal to 5% of the employee's eligible compensation for that pay period ("true-up matching contribution"). To receive either the SLR nonelective contribution or the true-up matching contribution, the employee would need to be employed by the company on the last day of the plan year (except in the case of termination of employment due to death or disability). Both SLR nonelective contributions and true-up matching contributions will be subject to the same vesting schedule as regular matching contributions.

The SLR nonelective contribution will not be treated as a matching contribution for purposes of any testing under or requirement of section 401(m). The true-up matching contribution, on the other hand, will be included as a matching contribution for purposes of any testing under or requirement of section 401(m). The SLR nonelective contribution will be subject to relevant plan qualification requirements, including the eligibility, vesting and distribution rules, contribution limits, and coverage and nondiscrimination testing.

The program is voluntary. An enrolled employee may opt out of enrollment on a prospective basis. An enrolled employee would still be eligible to make elective contributions to the plan but would not be eligible to receive regular matching contributions with respect to those elective contributions while the employee participates in the program. All employees eligible to participate in the Plan will be eligible to participate in the program. If an enrolled employee later opts out of enrollment, the employee will resume eligibility for regular matching contributions.

The legal issue addressed in the PLR is whether the proposed student loan benefit violates the "contingent benefit" prohibition under Code Section 401(k) and related Treasury regulations. Generally speaking, the "contingent benefit" prohibition makes it impermissible for a qualified cash or deferred arrangement under a 401(k) plan to condition (directly or indirectly) any other benefit (with limited exceptions such as matching contributions) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. In the PLR, the IRS ruled that the new plan feature under which SLR nonelective contributions are to be paid would not be conditioned (directly or indirectly) on the employee making elective 401(k) contributions and would not violate the "contingent benefit" prohibition because the SLR nonelective contributions would be conditioned solely on whether an employee makes a student loan repayment during a pay period, and because an employee who enrolls student loan benefit feature of the plan would still be permitted to make elective contributions.

PLRs, it should be remembered, are directed only to the requesting taxpayer and may not be cited as precedent. Nonetheless, the PLR identifies helpful parameters for employers that may be interested in designing a similar student loan benefit for inclusion in a 401(k) plan. Note that not all such student loan benefits would need to be identical in design -- the design of the 401(k) plan's present elective deferral and matching contribution features, however, would need to be considered in deciding whether and how such a student loan benefit could be integrated into an existing plan. And appropriate compliance testing may be needed to ensure that the feature does not inadvertently violate qualified plan standards such as the nondiscrimination rules. (*Private Letter Ruling 201833012*).