

New IRS Private Letter Ruling Provides for 401(k) Student Loan Repayment



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On August 17, 2018, at the request of a 401(k) plan sponsor concerned with violating the “contingent benefit” prohibition of section of the Internal Revenue Code, the IRS issued private letter ruling 201833012 (the Ruling). The Ruling was requested with the intent of assisting individuals, currently around forty-four (44) million Americans with student loan debt totaling more than \$1.3 trillion dollars. The Ruling provides a method for employers, under certain circumstances, to provide a student loan repayment benefit as part of their 401(k) plans and link the amount of employer contributions made on an employee’s behalf to the amount of student loan repayments made by the employee outside the plan.

The Ruling permits an employer to make a non-elective contribution to its 401(k) plan, where the amount of the non-elective contribution would be based on an employee’s total student loan repayments and would be contributed to the plan in lieu of the matching contributions that would otherwise be made to the plan had the employee made pre-tax, Roth 401(k) and/or after-tax contributions. Key features of the Ruling include: (i) voluntary participation in the student loan repayment benefit program and ability to opt out, subject to plan restrictions; (ii) the student loan repayment benefit will replace the employer matching contribution; (iii) the repayment benefit is subject to coverage and nondiscrimination testing; and (iv) is predicated on the plan sponsor not extending any student loans to employees that will

be eligible for the program.

The student loan repayment non-elective contributions are conditioned on the employee making a student loan repayment during a pay period, employment with the plan sponsor on the last day of the plan year (except in the case of termination of employment due to death or disability), are subject to the same vesting schedule as regular employer matching contributions, and are subject to all applicable plan qualification requirements, including eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing. However, the student loan repayment non-elective contribution will not be treated as a matching contribution for purposes of any testing.

It is important to note that employees are not eligible to receive any more in total contributions under the 401(k) plan than they could otherwise be entitled to receive in regular matching contributions. The employer contribution offsets any matching contribution an employee would otherwise be eligible to receive under the plan.

An employer looking to add this benefit to an existing retirement plan may require a custom plan document. A third-party provider may also be required to administer the student loan program (make sure that dollars get to the right place and verify loans). The addition of this option to an employer 401(k) plan can be a great recruitment tool for qualified applicants with significant student debt.

Bar’s Government Lawyers Committee Offering Free, 1-Credit CLE

CLE The Rhode Island Bar Association’s Government Lawyers Committee is sponsoring a free-to-Bar-members, one-credit, Committee CLE seminar. On **Thursday, February 7th, from 12:30 – 1:30 pm** at Rhode Island Bar Association headquarters, 41 Sharpe Drive in Cranston, Deputy Disciplinary Counsel Barbara Margolis, Esq. and Staff Attorney/Education Coordinator for the Rhode Island Ethics Commission Lynne Radiches, Esq. will present ***Ethics and Discipline for Government Attorneys and Colleagues of the Bar***. The seminar will focus on issues under the jurisdiction of the RI Office of Disciplinary Counsel and the RI Ethics Commission and help to clarify the distinctions between the two offices. Counsel from each office will

cover the structure of their respective offices, the complaint handling process, the controlling statutes and regulations, and the top three issues for government lawyer practice. This seminar will provide general information helpful to all practicing attorneys as well as target some issues specific to government lawyer practice.

To register, and for additional information, please contact Department of Business Regulations Legal Assistant Amy Morales: amy.morales@dbr.ri.gov.