

STUDENT LOAN BENEFITS AND OTHER 401(K) DEVELOPMENTS

MAY 14, 2019

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WHY CONSIDER STUDENT LOAN REPAYMENT BENEFITS?

- Tool to attract and retain talent
 - Easy to understand
 - Student loan debt = significant problem, particularly for younger employees with advance degrees
 - Tax advantage to employees (*if* structured correctly)

EMPLOYER OPTIONS FOR STUDENT LOAN BENEFITS (GENERALLY)

- Promotion of consolidation and refinancing
- Direct pay or reimbursements (taxable)
- Qualified plan contributions

QUALIFIED RETIREMENT PLAN OPTIONS

- Employer contribution to 401(k) plan tied to an employee's student loan repayments
 - Provide additional contribution or reallocate existing/available dollars (match replacement)
 - Benefit tied to student loan repayments can get employees started toward retirement savings
- Employer contributions (or employee after-tax contributions?) used to pay off student loan debt directly

QUALIFIED RETIREMENT PLAN DESIGN ISSUES

- Examine workforce
 - Is there a need?
 - Is there a desire?
 - Will plan be able to pass nondiscrimination testing?
- Costs
 - How important is cost neutrality?
- Administration
 - How to track student loan payments?
 - Communication

LEGAL ISSUES/COMPLICATIONS

- 401(k) “contingent benefit” or “anti-conditioning” rule
 - A cash or deferred arrangement will not be qualified if any other benefit (other than matching contributions) is conditioned *directly or indirectly* on an employee electing to make or not make contributions. Code Section 401(k)(4)(A).
 - Employer nonelective contributions are “other benefits.” Treas. Reg. section 1.401(k)-1(e)(6).

LEGAL ISSUES/COMPLICATIONS (CONT'D)

- Nondiscrimination testing
 - Employer nonelective contributions not included in ACP
 - Non-elective contributions must pass 401(a)(4)
 - Benefits, rights, and features
- Limits for ADP/ACP safe harbor plans
- Prohibited transaction issues

IRS PRIVATE LETTER RULING 201833012

- Employer may make a non-elective contribution to 401(k) plan for employees making student loan repayments
 - Under employer design contribution “matches” student loan contributions, but the contribution is not tied to whether or not the employee makes contributions to the 401(k) plan
 - Does **not** trigger anti-conditioning rule because contribution not conditioned on employee electing to make or not make 401(k) contributions

IRS PRIVATE LETTER RULING 201833012 (CONT'D)

- Contribution can be **offset** by making employees who receive it ineligible for matching contribution under employer design
- Contribution is subject to nondiscrimination testing in order to avoid discrimination in favor of HCEs
- Employer represents that it does not extend, and has no intention to extend, student loans to employees

IRS PRIVATE LETTER RULING 201833012 (CONT'D)

- PLR does not address:
 - Safe harbor 401(k) plans
 - Detailed questions on potential nondiscrimination and coverage testing problems
 - Impact on ADP/ACP testing
 - Benefits, rights and features
 - Employer contributions used to pay off student loans directly

WHAT'S NEXT?

- Limits of PLR
 - Limited to proposed transaction described in request and does not address full scope of issues that may arise more broadly
 - May not be relied on as precedent by other taxpayers or IRS personnel
 - More PLRs?
- Employer advocates requesting a Revenue Ruling or other guidance of general applicability
 - PSCA, American Benefits Counsel, ERISA Industry Committee among others

WHAT'S NEXT? (CONT'D)

- Legislation?
 - Retirement Security & Savings Act (Senators Portman & Cardin)
 - Would permit employer to make matching contributions with respect to student loan repayments
 - Retirement Parity for Student Loans Act (Senator Wyden)
 - Sponsors of 401(k) and 403(b) plans, including those with safe harbor plans, may make matching contributions on qualified student loan repayments. Employees must submit to the employer evidence of the student loan and the student loan repayment

401(K) DEVELOPMENTS – EXPANDED EPCRS

- Some loan failures now eligible for self-correction
 - Missed payments on defaulted loans
 - Too many loans
 - Spousal consent
- Loans that violate dollar limits, maximum loan periods, and level amortization still excluded
- Coordination with Dept of Labor's Voluntary Fiduciary Correction Program

401(K) DEVELOPMENTS – EXPANDED EPCRS

- Retroactive plan amendment now eligible for self-correction if the amendment:
 - Increases benefits or features available to all eligible employees that satisfies tax code and EPCRS rules OR
 - Corrects a loan issue that meets SCP requirements OR
 - Is legally required, but plan must have favorable IRS letter and adopt amendment by end of 2nd plan year after error occurs

401(K) DEVELOPMENTS – DETERMINATION LETTERS BACK?

- Effective Jan 1, 2017, IRS eliminated 5-year determination letter (DL) cycle
- DL requests accepted after Sept 1, 2019, if as part of business transaction among unrelated entities:
 - *A combined plan* occurs by last day of first plan year that begins after transaction date
 - The *DL request* is made by last day of first plan year that begins after plans combined

THANK YOU FOR YOUR TIME

Questions?

