401(k) Match on Student Loan Repayments: Godsend or Mixed Blessing?

In a Private Letter Ruling (PLR), the IRS has recently sort of, kind of, maybe, in special circumstances enabled employers to make a matching contribution to their 401(k) plan on behalf of eligible plan participants who, instead of contributing to the 401(k), make certain qualifying student loan repayments instead.

Wait. A company match in the 401(k) plan for making your student loan repayments? Employees making student loan repayments often don't have enough disposable income to also contribute to their 401(k) plan. What a great tool to attract and retain (at least until the student loan is paid off) employees who might have large student loans outstanding, such as millennials, return-to-school-at-a-later-age individuals, those with advanced degrees, and even lifelong learners. What's the catch?

Well, it turns out there are lots if you plow ahead and begin offering such a matching program without understanding all of the specifics.

The Facts

In this specific PLR, the fact pattern may matter quite a bit. The employer sponsored a 401(k) profit sharing plan. If an eligible employee contributed at least two percent of his or her compensation to the plan (the minimum contribution allowed by the plan if an employee was to qualify for a match), either in a regular pre-tax or Roth after-tax deferral, then the employer made a matching five percent contribution to the plan on that employee's behalf. The matching contribution was made each pay period.

This employer wanted to amend the plan to allow it to make an employer nonelective contribution conditioned on that employee making a student loan repayment (SLR). The program would be voluntary—an employee would have to elect to enroll in the program and could opt-out at any time prospectively. If the employee participated in the program,

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they would still be entitled to make pre-tax or Roth 401(k) contributions to the plan, but would be ineligible to receive the regular matching contribution. So in essence, no double-dipping in collecting two matches, one for the 401(k) contribution and one for making the student loan repayment. If the employee participated in the SLR matching program and later chose to opt-out, then the regular match would apply. In each pay period, if the employee made a student loan repayment of at least two percent of his or her eligible compensation for that pay period, the employer would make an SLR nonelective contribution equal to five percent of that person's eligible compensation as soon as practicable after the end of the plan year. For either a regular or an SLR match, the employee had to still be employed on the last day of the plan year in order to qualify, except in the event of the employee's death or permanent and total disability. Lastly, and very importantly, both the regular match and the SLR match were subject to the plan regular vesting schedule, and all other plan terms relating to eligibility, vesting, distribution, contribution limits, and nondiscrimination testing would apply.

The employer would not extend student loans to any employees.

What's the Catch?

First, a PLR is not the same as a law or regulation. It only applies to the individual or entity that provides a specific set of facts and asks for the Agency's opinion. That is, it's only applicable to that specific requestor, and only under the specific fact pattern presented to the Agency. The PLR reflects the Agency's thinking on that matter. It is not binding on the Agency for anyone else, albeit it does show what the Agency thinks about a specific fact pattern.

Second, because this specific fact pattern had a "regular" and SLR match that was subject to nondiscrimination testing, it is unclear if a matching safe harbor design would have passed the same muster with the IRS. While an argument can be made that such a safe harbor match program *should be* allowed under the same reasoning used in this PLR, we don't know for sure that it actually would do so.

Third, there are the nondiscrimination issues to contemplate. Both the regular and SLR nonelective contributions are subject to 401(m), or ACP testing. While we often think of student loan repayments being made by young nonhighly compensated employees, depending upon the employer's industry, the program could disproportionately favor highly compensated employees. For example, a medical practice with many new doctors might

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find that their SLR nonelective program fails ACP testing.

Fourth, there are many administrative hurdles to knowing how the employer would substantiate that the employee actually made a qualifying student loan repayment that activated the SLR match to the plan. Would an employer begin a payroll deduction (after-tax, of course) to make the actual student loan repayments itself, or would it seek cancelled checks from its employee in order to ascertain that the loan repayments were actually made?

Fifth, how would the SLR program work with all the permutations existent in student loan repayments, such as refinancing the loan, or loan deferment or forgiveness?

Sixth, what if an employer wanted to leave its regular 401(k) match in place, including for those enrolled in the SLR program, and add the SLR nonelective contribution to those making student loan repayments? Would the analysis be different?

Summary

While there was much made of the PLR in the general non-HR media (see Forbes and US News and World Report, for example), employers should proceed with caution until much more guidance is provided by the IRS. We need answers to many of the above questions. This anonymous employer was brilliantly seeking a new attraction and retention tool. As an employer and plan sponsor, unless you're prepared to seek a very expensive PLR of your own, you may wish to take a wait-and-see approach to an exciting new possibility.

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