

## STUDENT LOAN REPAYMENT PROGRAM AND IRS PLR

The job market is starting to tighten, and would-be employees are looking for extra benefits that make the organizations they apply to stand out from the crowd. One such benefit is student loan assistance. On Aug. 17, 2018, the IRS issued private letter ruling 201833012 (the “PLR”). The PLR addressed an individual plan sponsor’s desire to amend their 401(k) plan to include a program for employees that were making student loan repayments. The form of this benefit would be an employer nonelective contribution (“SLR Contribution”).

### HOW DOES IT WORK?

The design of the plan would result in matching contributions being made available to participants equal to 5% of compensation for every 2% of compensation deferred. Specifically, employees could receive up to 5% of compensation in the SLR Contribution for every 2% of student loan repayments they made during the year, and the appropriate SLR Contribution would be calculated at year-end.

The PLR states the program would allow a participant to both defer into the 401(k) and make a student loan repayment at the same time, but they would only receive either the match or the SLR Contribution — not both for the same pay period. If an employee enrolls in the student loan repayment program and later opts out without hitting the 2% threshold necessary for a SLR Contribution, they would be eligible for matching contributions for the period in which they opted out and made deferrals into the plan.

The PLR requested that the IRS rule that such design wouldn’t violate the “contingent benefit” prohibition under the Internal Revenue Tax Code (the “Code”). As background, the Code’s contingent benefit prohibition essentially states that the only benefit that can be conditioned upon an employee’s elective deferrals is a matching contribution. In response to the plan sponsor’s request, the IRS ruled that the proposed design doesn’t violate the contingent benefit prohibition, therefore allowing SLR contributions to be made when employees pay student loans.

### WHAT’S THE CATCH?

All that said, it’s important to note that a PLR is directed to a specific taxpayer requesting the ruling, and it’s applicable only to the specific set of facts and circumstances included in the request. That means other taxpayers – plan sponsors – cannot rely on the PLR as precedent. It is neither a regulation nor even formal guidance. However, it provides insight into how the IRS views certain arrangements. Thus, other plan sponsors that wish to replicate the design of the facts and circumstances contained in the PLR can do so with some confidence that they similarly will not run afoul of the contingent benefit prohibition.

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From a practical perspective it's important to consider a few related, and impactful, concepts and qualified plan rules. First, companies are increasingly aware of the heavy student debt carried by their employees and wish to assist them in alleviating this burden. They're exploring multiple programs they can offer than can help their employees. This particular design is meant to allow employees who cannot afford to both repay their student loans and defer into the 401(k) at the same time the ability to avoid missing out on the "free money" being offered by their employer in the 401(k) plan. It works by essentially replacing the match they miss by not deferring with the SLR Contribution they receive for participating in the student loan repayment program.

It's important to understand that, while the IRS has ruled in regard to the contingent benefit prohibition, they stated definitively that all other qualification rules (such as testing and coverage) would remain operative. Plan sponsors wishing to pursue adding such provisions to their 401(k) plans must be aware of how they undertake the design. This design is very basic in that it requires deferral/student loan repayment equal to 2% for a 5% employer contribution (either match or SLR Contribution). There can be no variations from this design, as varying the employee student loan payment required to receive a SLR contribution could create separate testing populations, which would make annual testing and administration much more difficult.

## THE BOTTOM LINE

If you're considering adding a student loan repayment program to your benefits package or wish to explore the potential for a qualified plan integrated program, please contact your plan advisor.

Jason E. Levine. "[Private Letter Ruling 201833012](#)." IRS Static Files Directory.

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