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January 10, 2019

VIA EMAIL/COURIER

Carol A. Weiser, Esq.
Acting Benefits Tax Counsel
U.S. Treasury Department
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Additional guidance regarding student loan repayment and qualified retirement plans

Dear Carol:

We understand that Treasury and the IRS are considering the issuance of additional guidance ("***Additional Guidance***") expanding the student loan repayment guidance set forth in IRS Private Letter Ruling 201833012 (May 22, 2018) (the "***PLR***"). Any such Additional Guidance could: (1) cover additional types of plans and plan designs, and (2) be issued in the form of guidance upon which other taxpayers could rely. [1]

As discussed, we are submitting the consolidated thoughts of representatives listed on Attachment A regarding issues and topics that could be addressed in any such Additional Guidance. In addition, as you know, the ERISA Industry Committee ("***ERIC***"), the American Benefits Council ("***ABC***") and the Plan Sponsor Council of America ("***PSCA***") previously submitted letters setting forth certain policy and design issues; rather than reiterating those issues here, for your convenience, we have included copies of those letters as Attachments B, C and D. Finally, we have included four case studies prepared by Teachers Insurance and Annuity Association of America ("***TIAA***") (Attachment E).

[1] Providing such guidance could potentially eliminate the need for the IRS to process determination letter requests regarding qualified retirement plans. We note that, following the release of IRS Revenue Procedure 2019-4 (which added a new category of "Other Circumstances" for which determination letters can be requested), one newsletter headline read: "*IRS Adds 'Other Circumstances' for Determination Letter Requests, So You Want to Offer a Student Loan Repayment Benefit.*"

Collectively, we very much look forward to meeting with Treasury and the IRS to discuss these issues. The PLR arose in the context of one employer's thoughtful attempt to assist its employees with the pressing issue regarding the repayment of student loan debt by providing eligible employees with a profit-sharing contribution designed to roughly replicate the employer's regular matching contribution. At the heart of the ruling was the conclusion that the program described in the PLR would *not* violate the "contingent benefit" prohibition of Internal Revenue Code Section 401(k)(4)(A)[2] and Treasury Regulations Section 1.401(k)-1(e)(6).[3] In this letter, we refer to the contribution described in the PLR as a "Student Loan Repayment Match."

The majority of the requests for topics to be covered in any Additional Guidance can be summarized as follows. There is a broad consensus amongst those entities listed on Attachment A regarding the need for Additional Guidance in the following areas:

> **Application to safe harbor plans.** We would like to discuss the issuance of additional guidance regarding how Student Loan Repayment Matching Contributions can operate in safe harbor plans. For instance, it would be helpful to clarify that a 401(k) plan using the matching contribution safe harbor design will be able to utilize Student Loan Repayment Matches (*i.e.,* clarify that the non-elective contributions can be treated as matching contributions for purposes of Treasury Regulation Section 1.401(k)-3(c)).
>
> **Coverage of other types of defined contribution plans.** Because the employer requesting the PLR sponsored a Code Section 401(k) plan, the PLR, understandably, does not apply to 403(b) plans. We would like to discuss the issuance of additional guidance addressing that Student Loan Repayment Matches also may be permissible to other plans, such as 403(b) plans.

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[2] Internal Revenue Code Section 401(k)(4)(A) provides:

> A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

[3] Section 1.401(k)-1(e)(6) similarly provides:

> A cash or deferred arrangement satisfies this paragraph (e) [Additional requirements for qualified cash or deferred arrangements] only if no other benefit is conditioned (directly or indirectly) upon the employee's electing to make or not make elective contributions under the arrangement. The preceding sentence does not apply to (A) any matching contribution (as defined in section 1.401(m)-1(a)(2)) made by reason of such an election…

Impact on nondiscrimination testing and other administrative issues. We would like to discuss certain questions regarding nondiscrimination testing as well as certain administrative issues such as the timing of contributions to plans based upon student loan payments made during a plan year. For instance, may regular matching contributions be aggregated with Student Loan Repayment Matching contributions for purposes of helping contributions satisfy the coverage and nondiscrimination tests? Similarly, on the administration side, if student loan debt is paid monthly (or on any cycle that is different than the elective deferral contribution cycle), would Student Loan Repayment Matching contributions need to follow the regular matching contribution cycle or may Student Loan Repayment Matching contributions be made on another cycle (*i.e.,* once the student loan debt repayment is confirmed)?

Availability of Correction Programs. We believe it would be helpful to provide guidance regarding whether employers may use correction programs such as the IRS Employee Plans Compliance Resolution System ("***EPCRS***") if there are inadvertent errors in the administration of their Student Loan Repayment Matching programs.

Impact on pre-approved plan documents. We would also like to discuss whether Student Loan Repayment Matches may be included within a pre-approved plan document without the loss of reliance on the opinion/advisory letter.

In addition, several of the entities listed in Attachment A would like any Additional Guidance to address the following three areas:

Contributions made to Section 529 Funds. We would like to discuss guidance on whether payments into Section 529 funds (rather than the repayment of the student loan debt), could also be acceptable. For example:

- Assuming appropriate verification mechanisms could be established, would an employee contribution to a 529 fund permit a Student Loan Repayment Matching contribution?
- Similarly, could an employer aggregate employee contribution towards student loan repayment *or* 529 funds as the basis for a Student Loan Repayment Matching contribution?

Employer-Funded Student Loan Accounts. In earlier rulings, such as Revenue Ruling 2009-31, the IRS has permitted the value of an employee's unused/forfeited PTO to be applied as additional elective or non-elective contributions (depending on whether cash is included as an option) to the employee's 401(k) account. It would be very helpful if the IRS were to issue a similar ruling whereby an employer could establish a similar type program where any amounts in a "student loan account" (*e.g.,* $5,000) that are not applied to an employee's student loan debt would be forfeited and contributed on behalf of the employee as either elective or non-elective contributions (again depending on whether cash is included as an option) without running afoul of the constructive receipt, assignment of income, or "cash or deferred arrangement" rules.

Application to other types of debt repayment and to other actions. While student loan repayments are certainly one of the most pressing financial issues facing many employees, the rationale of the PLR could extend to the repayment of other types of debt, such as mortgage debt. We would like to discuss what other types of debt repayment could potentially receive the same treatment as the Student Loan Repayment Match – particularly as more employers move to elective deferral plans as their primary (or exclusive) retirement plan vehicle, and significant debt amounts (of any type) may limit an employee's ability to fully participate in the retirement plan. In addition, we would like to discuss whether Treasury and IRS will consider a broader approach that would let employers use Student Loan Repayment Matches for uses beyond helping workers with student loan debt, such as for participating in a financial wellness program or contributing to an HSA.

* * *

Carol, we thank you greatly for your willingness to consider these issues. We very much look forward to setting up a meeting with the IRS and Treasury to discuss these ideas because we believe that there is a tremendous amount of interest in this topic in both the employer and vendor communities.

Sincerely,

David E Rogers

David E. Rogers

Enclosures

ATTACHMENT A

Attachment A
List of Representatives

ACLI
Howard Bard

American Benefits Council
Lynn Dudley
Diann Howland
Jan Jacobson

American Retirement Association
Will Hansen
Craig Hoffman
Marty Pippins

Brownstein Hyatt Farber Schreck, LLP
Rosemary Becchi
Charles Iovino

CommonBond
Tara Fung
Leigh Gross
Davis Harman
Kent Mason
Veena Ramaswamy

ERIC
Annette Guarisco Fildes
Aliya Robinson

Fidelity Investments
Stephen Caywood
Kirsten Hunter
Alice Joe
Ashwini Srikantiah

Marketplace Lending Association
Nat Hoopes

Mercer
Geoff Manville

NFP
Kyle Healy

OB-C Group
Dan Kidera

Plan Sponsor Council of America
David Levine (Groom)
Kenneth Raskin
Brigen Winters (Groom

SoFi
Jacqueline Barrett
Rob Lavet

Thompson Hine
Tim Brown
John Wendelin

TIAA
Jill Brown

US Chamber of Commerce
Aliya Wong

Willis Towers Watson
David Amendola

Winston & Strawn
Joseph Adams
David Rogers

ATTACHMENT B

ERIC

The ERISA Industry Committee

Driven By and For Large Employers

701 8th Street NW, Suite 610, Washington, DC 20001 • (202) 789-1400 • www.eric.org

Will Hansen, Senior Vice President of Retirement Policy

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Ave NW
Washington, DC 20224

RE: **Request for Revenue Ruling Relating to Employer Contributions to 401(k) Plan to Reflect Participant Student Loan Repayments**

Dear Mr. Kautter:

The ERISA Industry Committee ("ERIC") commends the Internal Revenue Service for issuing PLR-131066-17 (May 22, 2018), which permits a 401(k) plan sponsor to contribute to a 401(k) plan on behalf of plan participants who pay down student loan debt but do not necessarily contribute to the employer's 401(k) plan. ERIC writes to encourage the Internal Revenue Service to issue a revenue ruling that broadens the reach of this favorable guidance.

ERIC is the only national association that advocates exclusively for the nation's largest employers on health, retirement, and compensation public policies at the federal, state, and local levels. Our member companies offer employee benefits to millions of workers and families across the country, and promote retirement savings, financial wellness, and health care value improvements and cost savings. ERIC advocates for public policies that support the ability of large employers to offer benefits effectively and efficiently under the federal regulatory framework of ERISA

Workers in the United States are increasingly dependent on 401(k) and other defined contribution plans as their principal means of retirement savings. In this environment, workers who are unable to set aside a sufficient amount of their own money for their retirement are less likely to have a financially secure retirement. This problem is compounded by the fact that many employers "match" workers' contributions to their retirement plans, meaning that workers who fail to set aside a sufficient amount of money also lose out on the matching contributions.

This problem is particularly acute for workers who get a late start on retirement savings. Workers who do not begin setting aside money for their retirement early in their careers often are not able to "catch up" in their retirement savings. An estimate by the Vanguard Group shows that a worker who saves annually from ages 25-40 can expect to have more money at age 65 than a worker who saves the same amount annually from ages 35-65.[1]

[1] "When should you start saving for retirement?", The Vanguard Group (https://investor.vanguard.com/retirement/savings/when-to-start).

Student loan debt plays into both of these problems:

- *Student Loan Debt Reduces Participation in 401(k) Plans.* Student loan debt often prevents workers from electing to participate in 401(k) plans. A 2016 study by Prudential Financial noted that "[f]orty percent of graduates still paying down student loan debt say the cost of attending college has prevented or delayed saving for retirement,"[2] and another 2016 Prudential Financial report highlights the impact of workers losing employer matching contributions due to student loan debt repayments and encourages employers to "[c]onsider ways to help employees pay off student loans as well as save for retirement."[3]

- *Student Loan Debt Reduces Contributions to 401(k) Plans.* Student loan debt reduces the amount that a worker can contribute to a 401(k) plan. A recent study from the Center for Retirement Research at Boston College estimates that, for college graduates, retirement "assets are about 50 percent lower for those with student loans compared to those with no loans. These results suggest that among college graduates, the presence of a student loan does impact retirement saving."[4]

Many employers recognize the burden that student loan debt can have on their workers' ability to save for retirement and would like to help these workers. However, while we believe that current law allows employers to make contributions to their retirement plans on behalf of workers who repay student loan debt, the IRS has yet to clearly articulate that such contributions will not affect the tax-qualified status of an employer's retirement plan. The recently issued PLR is a significant step in this direction, but we believe that more employers would be encouraged to implement programs similar to the one described in the PLR if the IRS would issue a revenue ruling or other guidance of general applicability on this issue.

ERIC is uniquely situated to work with the IRS to develop such a revenue ruling to make sure that it has the maximum impact in helping workers strapped with student loan debt save for their retirement. If you agree that this is an issue worth addressing and that ERIC can be of further assistance, please do not hesitate to contact me at whansen@eric.org or (202) 627-1930.

Sincerely,

Will Hansen

Will Hansen
Senior Vice President, Retirement Policy

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[2] "Student Loan Debt Implications on Financial and Emotional Wellness," Prudential Financial https://www.prudential.com/media/managed/documents/rp/Prudential-Student-Loan-Brochure-2017.pdf

[3] "Planning for Retirement: The Growing Impact of Student Loan Debt on Retirement Security," Prudential Financial (February 2016) (https://www.prudential.com/media/managed/documents/rp/NRRI_Paper_Feb_2016.pdf).

[4] "Do Young Adults with Student Debt Save Less for Retirement?", Center for Retirement Research at Boston College (June 2018) (http://crr.bc.edu/wp-content/uploads/2018/06/IB_18-13.pdf).

ATTACHMENT C

AMERICAN BENEFITS COUNCIL

December 26, 2018

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Dear Carol, David, and Vicki:

On behalf of the American Benefits Council ("Council"), I am writing concerning guidance on retirement issues related to student loan repayments. We believe that there is a great opportunity to work together to advance retirement security, especially for employees so burdened with student debt that they cannot afford to save for retirement. In this regard, the Council would very much like the opportunity to meet with you so that Council members can share their thoughts, as summarized below, on these critical issues.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

As noted above, the student debt burden on American workers is a significant, broad, and pressing financial issue for workers of all ages that goes beyond the retirement plan issues discussed in this letter, but these retirement plan-related issues are a vital part of addressing the challenge. In addition, we recognize that a full solution to these retirement plan-related issues may require legislation. But there is much that can be achieved without legislation, and we applaud the IRS for issuing Private Letter Ruling ("PLR") 201833012, which provides a mechanism under current law for employers to help employees overburdened with student debt save for retirement.

Employers commonly make matching contributions on behalf of employees who contribute to a 401(k) plan. An employee burdened by student debt, however, might be unable to afford to make any contributions to a plan, and therefore miss out on a valuable employer match. The PLR approved an arrangement under which the plan treated student loan repayments as elective contributions to the plan, solely for purposes of eligibility for a "matching" contribution.

We are writing today to request guidance of general applicability that can help spur greater development of these programs. That guidance would, of course, reiterate the core discussion of the contingent benefit rule addressed in the PLR. The guidance can hopefully also address the other key issues discussed below.

Core Discussion of the Contingent Benefit Rule

There has been some uncertainty about whether the conclusions reached in the PLR were based in any way on the particular facts presented, such as the particular matching formula or the structure and timing of the true-up matching contribution. We do not see anything in the law or the PLR that would limit the application of the same legal principles to other types of matching arrangements (such as 50% matches on elective contributions up to 6% of pay) or "true-up" matching contributions that are made during the plan year (such as on a monthly or pay period basis). Confirmation of these points in guidance would be helpful. It would also be helpful for the guidance to, of course, confirm that 403(b) plans can include such student loan matching arrangements.

Administration

One of the major challenges facing plans in implementing a student loan matching program is the administrative burden of documenting that an employee has actually made a student loan repayment and the amount of that repayment. It would be very helpful if guidance could be issued confirming that plan sponsors are not required to collect any documentation regarding the student loan, including loan agreements and cancelled checks to reflect the amount of the repayment. Plan sponsors should be able to rely on generally applicable fiduciary rules that govern the operation of their plans in administering these student loan programs. Indeed, plan sponsors have their own financial motivations for ensuring that matching contributions are appropriately applied.

One of the key points here is that these programs are just beginning. In order for them to develop and flourish, employers need administrative flexibility, which is why workable administrative systems, including use of employee certifications, should be allowed. Beyond facilitating what is doable today, the guidance should more generally be flexible enough to accommodate innovations and new developments in this area.

NONDISCRIMINATION TESTING

The approach approved in the PLR may work for some companies, particularly larger companies that can pass coverage and nondiscrimination testing based on the composition of its workforce. For many others, however, the approach will create nondiscrimination and coverage testing problems, because the "matching" contributions are technically nonelective contributions that must be tested separately for coverage and nondiscrimination. We believe that it is within the authority of Treasury and the IRS to address certain of these issues in guidance of general applicability. Set forth below are recommendations for inclusion in such guidance.

Allow safe harbor plans to use the approach described in the PLR: Under one interpretation of current law, as explained below, it appears that a safe harbor 401(k) plan could not use the arrangement described in the PLR.

An employee who makes an elective contribution and also repays a student loan must receive the nonelective contribution first, before receiving any remaining available matches on the elective contribution in order to avoid violating the "contingent benefit rule." [1] Otherwise, receiving the nonelective contribution would impermissibly be contingent on the employee not making elective contributions.

In this context, because participants participating in the plan's student loan program receive a nonelective contribution instead of a matching contribution, any nonelective contribution received by a nonhighly compensated employee ("NHCE") could cause a violation of the safe harbor requirement in Reg. §1.401(k)-3(c)(4) if any highly compensated employee ("HCE") receives a full match. The NHCE, in this case, would be eligible for a lower rate of matching contribution than the HCE, which is prohibited by the statute and regulation.

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[1] The contingent benefit rule prohibits any benefit (other than an employer match) from being conditioned (directly or indirectly) on an employee electing to make or not make elective contribution to a plan. Code section 401(k)(4)(A); Regulation 1.401(k)-1(e)(6).

Treasury and the IRS could easily provide guidance solving this problem by clarifying that in the above situation, all NHCEs are eligible for the same rate of matching contribution as all HCEs. This is clearly true as of the beginning of the year, and the fact that an NHCE can take a voluntary action, i.e., requesting a nonelective contribution based on a student loan repayment, does not mean that the NHCE was eligible for a lower rate of matching contribution.

Permit matching contributions to be aggregated with nonelective contributions for purposes of helping the nonelective contributions satisfy the coverage and nondiscrimination in amounts tests: Many of the problems preventing employers from offering the student loan arrangement described in the PLR stem from the need to test nonelective contributions separately. Accordingly, if employees receiving or eligible to receive these nonelective contributions are disproportionately highly compensated, the nonelective contribution portion of the plan can fail in any year to satisfy the coverage and/or nondiscrimination rules.

This challenge can be addressed by permitting the matching contribution portion of a plan to be aggregated with the nonelective contribution portion of a plan to help the latter satisfy the coverage and nondiscrimination in amounts test. There is no statutory or policy reason why in this situation the matching contribution part of a plan cannot be aggregated with nonelective contributions to help nonelective contributions satisfy the applicable rules. In fact, the regulations already permit this aggregation in the average benefit percentage test context.[2] There is no reason not to permit the same aggregation treatment here.

This would require a change to the regulations, but it would be a broadly needed and appropriate change. This could be easily done by issuing a Notice announcing the intent to make this change through a regulatory amendment, retroactive to the date of the amendment.

Benefits, rights, and features ("BRF") testing, issue one: Assume, for example, that a plan provides a dollar for dollar match on elective contributions up to 6% of pay. Assume that such a plan also provides the same match on student loan repayments, so that the total match available cannot exceed 6% of pay. Assume further that an NHCE makes a student loan repayment of 6% of pay and gets the full match. In that situation, if the NHCE makes an elective contribution, it would not be matched, raising a question of how that NHCE should be treated for purposes of testing the "right to each rate of allocation of matching contributions" under Reg. § 1.401(a)(4)-4(e)(3)(iii)(G). In our view, the answer is the same answer discussed above regarding safe harbor plans. The full matching rate was made available to that NHCE. That fact should not be negated by

[2] *See* Regulation § 1.401(b)-7(e)(1).

the fact that the employee made a voluntary decision to request a match on student loan repayments.

Alternatively, another way to address this issue would be to permit the availability of the nonelective contribution to be aggregated with the availability of the matching contribution for purposes helping the latter satisfy BRF testing. This is an eminently logical conclusion that conform the law to the substance of the arrangement. The NHCE in this example can receive what are effectively matching contributions on the same basis as all others in the plan. There is no reason to treat the NHCE as effectively not having matches available to her. .

Benefits, rights, and features testing, issue two: There may be somewhat different timing for (1) making matching contributions on elective contributions, versus (2) making matching contributions on student loan repayments, with the latter being made later. We request guidance stating that if all eligible employees had the choice to get the earlier match by making elective contributions, the earlier match is available to all eligible employees for purposes of BRF testing.

Nondiscriminatory classification test: Under the section 410(b) coverage rules, the nonelective contribution portion of a plan must be tested separately (unless that is modified as proposed above). If such portion of the plan cannot satisfy the ratio percentage test, then such portion would be required to satisfy the average benefit test, which requires satisfaction of the nondiscriminatory classification test. The nondiscriminatory classification test includes the "reasonable classification" rule, which requires that "the classification [of employees covered by the plan] is reasonable and is established under objective business criteria that identify the category of employees who benefit under the plan."[3] There is no guidance regarding whether a reasonable classification could be a group of employees that (1) are paying back a student loan, and (2) request an employer contribution based on that payment. Thus, without guidance on this point, adoption of the student loan arrangement would come with some legal uncertainty.

We see no reason why such a group of employees would be unreasonable or raise any of the concerns that gave rise to this regulatory requirement. Accordingly, we request guidance that this type of group would satisfy the reasonable classification component of the nondiscriminatory classification test.

ADP and ACP testing: If the employees using the student loan program are disproportionately NHCEs, then the student loan program could cause testing problems under the ADP test applicable to elective deferrals or the ACP test applicable

[3] Regulation § 1.410(b)-4(b).

to matching contributions. We ask you to consider using your regulatory authority to permit the student loan matches to serve as qualified nonelective contributions, without having to be tested separately as nonelectives. The case for such treatment is especially strong with respect to the ACP test, since the student loan nonelectives are functionally the same as the plan's matching contributions.

Eliminating a Barrier to an Innovative Approach

We wanted to call to your attention an approach being contemplated with respect to student loan matching contributions. In some cases, plans provide matching contributions with respect to after-tax contributions. This presents an opportunity to facilitate matching contributions on student loan repayments in the following manner.

Employees wishing to receive a matching contribution on a student loan repayment would make an after-tax contribution to the plan equal to or greater than the amount of the student loan payment. The employee would then request a withdrawal from the plan of that after-tax contribution and request that it be forwarded to the student loan creditor. This after-tax contribution would be matched, thus facilitating a matching contribution of a student loan repayment in a very administrable manner.

We ask for guidance that this structure does not pose any technical problems. Specifically, we ask that the after-tax contribution be respected as an after-tax contribution for all purposes, so that the matching contribution would be a true matching contribution for all purposes, thus solving many thorny testing issues that would apply if the matching contribution were treated as a nonelective contribution. The contribution was validly made to the plan. The fact it is withdrawn does not undo its status as a valid after-tax contribution.

We recognize that there are some old rulings that call into question employees' ability to withdraw contributions that are matched. See Rev. Rul. 72-275 (employee contributions cannot be immediately withdrawn if they are the basis for employer contributions, since that "would permit manipulation of the allocation and contravene the requirement in section 1.401-1(b)(1)(ii) of the regulations for a definite predetermined allocation formula"); Rev. Rul. 74-55; Rev. Rul. 72-367 (concluded that a plan would not be disqualified if the withdrawal of employee contributions also required the forfeiture of employer contributions that were geared to the withdrawn employee contributions, as evidence of financial need); Rev. Rul. 74-56.

We question the current applicability of such rulings in light of today's plan practices and arrangements. We ask that guidance clarify that such rulings would not apply to the above contemplated arrangement, either because (1) the rulings are no longer valid, or (2) there is no reason to prohibit matching after-tax contributions that are used to repay student loans, since it is permissible to match student loan repayments.

We further ask for guidance permitting the distribution of the after-tax contributions used to pay for the student loan debt to be treated as all basis. In general, if there is income in the separate contract containing the after-tax contributions under section 72(d), then distributions from that contract are pro rata income and basis. But in this case, the plan is effectively just a conduit between the participant and the student loan creditor, so there is no reason to attach any income to the plan passing on an after-tax contribution in this capacity.

ACCOMMODATING INNOVATION

Employers are actively exploring new ways to help their employees with student debt. For example, some employers may want to "match" their employees' student loan repayments by making additional student loan repayments, if the employee elects such employer repayments in lieu of being eligible in whole or in part for a matching contribution to the plan. We ask you to consider how best to encourage this and similar types of innovation. We look forward to continued dialogue regarding how this might be done, including (1) not treating the employee election as a cash or deferred election, and (2) through ensuring that such programs do not have adverse effects on retirement plan nondiscrimination testing.

CONCLUSION

Even if legislation is still needed to solve all the challenges faced by student loan repayment programs, the guidance requested above would enable far more employers to help employees burdened with student loans to save for retirement.

Thank you for considering the issues addressed in this letter. We look forward to discussing these issues with you further.

Sincerely,

Lynn D. Dudley

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy
American Benefits Council

ATTACHMENT D

PSCA Plan Sponsor Council of America
Part of the American Retirement Association

January 9, 2019

Ms. Carol Weiser
Acting Benefits Tax Counsel
U.S. Treasury Department
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Additional Guidance Regarding Student Loan Repayment and Qualified Retirement Plans

Dear Ms. Weiser:

The Plan Sponsor Council of America (PSCA) appreciates the guidance provided in Private Letter Ruling 201833012 (the "PLR") regarding innovative plan design options available to help address the student loan crisis. The PLR was a great initial step, but since only the taxpayer to which it was issued can technically rely on it, and the determination letter program is not open to accept such plan design amendments, PSCA encourages the Service to provide broad relief to all plan sponsors interested in taking similar plan design approaches.

PSCA is a diverse, collaborative community of engaged retirement savings plan sponsors, working together on behalf of millions of employees to solve real problems, create positive change, and expand on the success of the employer-sponsored retirement savings system. With members representing employers of all sizes and from all industries, PSCA is improving American retirement security by creating a forum for comprehensive dialogue and serving as a resource to policymakers, the media, and other stakeholders.

The PLR helpfully concludes that the plan design at issue there would not violate the "contingent benefit rule." However, additional guidance in this area is needed to extend the availability of the guidance to other taxpayers and address other issues. PSCA strongly encourages the Service to provide additional, broadly applicable guidance in the following areas:

- Provide guidance on the impact of the design in the PLR on coverage and nondiscrimination testing.
- Extend the guidance on the design in the PLR to safe harbor 401(k)/(m) plans.
- Extend the guidance on the design in the PLR to 403(b) plans.
- Clarify that the design in the PLR may be included within a pre-approved plan without the loss of reliance on the opinion/advisory letter.
- Describe any parameters for eligible student loans for these purposes.

As Treasury and the IRS work to develop guidance in this area, we urge you to contact us if we can be of any assistance.

Thank you for your time and consideration. Please call David Levine (202-861-5436), Brigen Winters (202-861-6618) or me (212-556-2162) if you have any questions.

Sincerely,

Kenneth A. Raskin
President
Plan Sponsor Council of America

ATTACHMENT E

Attachment E
Case Studies Prepared by TIAA

Case Study Assumptions:

- All employees will be eligible to enroll in a voluntary student loan benefit program under the plan

- If an employee enrolls in the program and makes a student loan repayment equal to 2% or more of their eligible compensation for a pay period, the employer will make a nonelective contribution to the plan equal to 5% of the employee's compensation for that period

Case Study #1 – Employee has a student loan

Jane works at Alpha Bravo Company (ABC) making $40,000 per year. Jane is eligible to participate in the ABC Plan, but does not actively participate (e.g., deferral is $0; employer matching contribution is $0). Jane has $80,000 in student loans. Jane has been paying $1,000 per month for the past 2 years and has 8 years remaining on her loan. In 2017, Jane paid $12,000 in student loans ($1,000 x 12 months).

This means, Jane has contributed thirty percent (30%) of her eligible pay towards repaying the student loan ($12,000 / $40,000 = 30%). Because Jane paid $12,000 to repay her student loan, Jane would be eligible to receive a 5% nonelective contribution equal to $2,000 into the ABC Plan as a nonelective contribution by ABC.

Considerations / Questions:

- ABC will have to rely on Jane to provide the actual student loan repayment

- ABC could.use a 3rd party source to substantiate the repayment amount

- If Jane overstated her student loan repayment amount or provided incorrect data, ABC can correct any operational failure that may have occurred as a result of the error through EPCRS

- If ABC directs and the record keeper agrees to manage the process, the record keeper would not be held responsible for the employee providing inaccurate student loan information

Case Study #2 – Cosigning Student Loan

Bill has a child that is in college. Bill has co-signed for the student loan that is for the educational benefit of his child. Bill works at Employer XYZ making $40,000 per year. Bill is eligible to participate in XYZ plan but does not actively participate (e.g. Deferral is $0). Bill has been paying $1,000 per month for the past 2 years. In 2017, He paid $12,000 in student loans ($1,000 x12 months).

This means, he has contributed more than 5% of his eligible pay towards repaying his student loan (He's contributed 30% towards student loan repayment = $12,000/$40,000). Because Bill paid $12,000 to repay the student loan, Bill would be eligible to receive a 5% nonelective contribution equal to $2,000 into the XYZ Plan as a nonelective contribution by ABC.

Consideration / Question

- Even though the student loan is Bill's child's loan, Bill can receive the nonelective employer contribution because Bill co-signed for the loan and is repaying the loan

Case Study #3 – Employee works for the University in which the employee has a student loan

John works at ABC University making $40,000 per year. John is eligible to participate in the University's 403(b) retirement plan but does not actively participate (e.g. Deferral is $0). John has $80,000 in student loans from attending ABC University. He has been paying $1,000 per month for the past 2 years and has 8 years remaining on his loan. In 2017, he paid $12,000 in student loans ($1,000 x12 months).

This means he has contributed more than 5% of his eligible pay towards repaying his student loan (He's contributed 30% towards student loan repayment = $12,000/$40,000). Because John paid $12,000 to repay his student loan, John would be eligible to receive a 5% nonelective contribution equal to $2,000 into the ABC Plan as a nonelective contribution by ABC.

Considerations / Questions:

- ABC should be allowed to provide the student loan feature in the Plan as long as there is no additional incentive or disincentive to John for utilizing the feature

- No conflict of interest for ABC or the plan record keeper, if certain requirements are met

Case Study #4 – Employee works for full service financial institution

Kathy works at Financial Services Company ABC as a manager making $40,000 per year. Kathy is eligible to participate in the Company's defined contribution plan but does not participate. Kathy has $80,000 in student loans from 4 different vendors. Financial Services Company ABC provides banking services through the Company's bank affiliate. Kathy consolidates his $80,000 in student loans with the Company's bank affiliate. She has been paying $1,000 per month for the past 2 years and has 8 years remaining on his loan. In 2017, she paid $12,000 in student loans ($1,000 x12 months).

This means she has contributed more than 5% of his eligible pay towards repaying his student loan (She's contributed 30% towards student loan repayment = $12,000/$40,000).). Because

Kathy paid $12,000 to repay her student loan, Kathy would be eligible to receive a 5% nonelective contribution equal to $2,000 into the ABC Plan as a nonelective contribution by ABC.

Considerations/Questions:

- If the Financial Services Company wanted to offer this to its employees, how can they offer if the *"Taxpayer represents that it has not extended and has no intention to extend any students loans to employees that will be eligible for the program."* Is this requirement extended to all Employers including financial institutions? The quote is from the current PLR.