Internal Revenue Service

Number: **201833012**
Release Date: 8/17/2018

Index Number: 401.29-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP4
PLR-131066-17

Date:
May 22, 2018

In Re:

Taxpayer =
Plan =

Dear :

This letter responds to Taxpayer's request dated August 9, 2017, as supplemented by correspondence dated February 22, 2018 and May 3, 2018, in which a ruling is requested under section 401(k) of the Internal Revenue Code ("Code").

The following facts and representations were submitted under penalties of perjury on Taxpayer's behalf:

Taxpayer sponsors the Plan, which is a defined contribution plan with a section 401(k) cash or deferred arrangement feature that is intended to qualify for tax-favored treatment under section 401(a).

Under the Plan, an eligible employee may elect to contribute a portion of his or her eligible compensation to the Plan each payroll period as pre-tax or Roth 401(k) elective deferrals, or after-tax employee contributions (collectively, "elective contributions"). If an eligible employee makes an elective contribution during a payroll period equal to at least 2% of his or her eligible compensation during the pay period (the minimum permitted elective contribution under the Plan), Taxpayer makes a matching contribution ("regular matching contribution") on behalf of the employee equal to 5% of the employee's eligible compensation during the pay period. The regular matching contributions are made each payroll period.

Taxpayer proposes to amend the Plan to offer a student loan benefit program under the Plan (the "program"), under which Taxpayer would make an employer nonelective

contribution on behalf of an employee conditioned on that employee making student loan repayments ("SLR nonelective contribution"). The program is voluntary - an employee must elect to enroll, and once enrolled, may opt out of enrollment on a prospective basis. If an employee participates in the program, the employee would still be eligible to make elective contributions to the plan but would not be eligible to receive regular matching contributions with respect to those elective contributions while the employee participates in the program. Such an employee would be eligible to receive SLR nonelective contributions and true-up matching contributions, as appropriate, described below. All employees eligible to participate in the Plan will be eligible to participate in the program. If an employee initially enrolls in the program but later opts out of enrollment, then the employee will resume eligibility for regular matching contributions.

Under the program, if an employee makes a student loan repayment during a pay period equal to at least 2% of the employee's eligible compensation for the pay period, then Taxpayer will make an SLR nonelective contribution as soon as practicable after the end of the year equal to 5% of the employee's eligible compensation for that pay period. The SLR nonelective contribution is made without regard to whether the employee makes any elective contribution throughout the year. If the employee does not make a student loan repayment for a pay period equal to at least 2% of the employee's eligible compensation, but does make an elective contribution during that pay period equal to at least 2% of the employee's eligible compensation for that pay period, then Taxpayer will make a matching contribution as soon as practicable after the end of the plan year equal to 5% of the employee's eligible compensation for that pay period ("true-up matching contribution"). In order to receive either the SLR nonelective contribution or the true-up matching contribution, the employee would need to be employed with Taxpayer on the last day of the plan year (except in the case of termination of employment due to death or disability). Both SLR nonelective contributions and true-up matching contributions will be subject to the same vesting schedule as regular matching contributions.

The SLR nonelective contribution will be subject to all applicable plan qualification requirements, including, but not limited to, eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing. The SLR nonelective contribution will not be treated as a matching contribution for purposes of any testing under or requirement of section 401(m). The true-up matching contribution will be included as a matching contribution for purposes of any testing under or requirement of section 401(m).

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.

Based on the preceding facts, Taxpayer requests a ruling that its proposal to amend the Plan to provide SLR nonelective contributions under the program will not violate the

"contingent benefit" prohibition of section 401(k)(4)(A) and section 1.401(k)-1(e)(6) of the Income Tax Regulations.

With respect to your ruling request, section 401(k)(4)(A) provides that

> 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.

Section 1.401(k)-1(e)(6) similarly provides that

> 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…

In the present case, SLR nonelective contributions under the program are conditioned on whether an employee makes a student loan repayment during a pay period and are not conditioned (directly or indirectly) on the employee making elective contributions under a cash or deferred arrangement. Furthermore, because an employee who makes student loan repayments and thereby receives SLR nonelective contributions is still permitted to make elective contributions, the SLR nonelective contribution is not 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.

Therefore, with respect to your ruling request, we conclude that your proposal to amend the Plan to provide SLR nonelective contributions under the program will not violate the "contingent benefit" prohibition of section 401(k)(4)(A) and section 1.401(k)-1(e)(6).

This ruling is based on the assumption that Taxpayer will not extend any student loans to employees that will be eligible for the program.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This letter expresses no opinion as to whether the Plan satisfies the requirements of section 401(a). Additionally, we have not reviewed, and no opinion is expressed or implied concerning the federal tax consequences of, the terms of the Plan beyond of the scope of the requested ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if: there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

Sincerely,

Jason E. Levine
Senior Technician Reviewer
Qualified Plans, Branch 4
Tax Exempt & Government Entities

cc: