Retirement Times
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Repay Student Loans or Save in a Retirement Plan? Why Not Both?

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Many employees feel squeezed to both pay off their debt and save for their future. A recent Private Letter Ruling (PLR) opens the door for employers to help them.

The average student graduating in 2016 has $37,172 in student loan debt.[1] According to the New York Federal Reserve, more than two million student loan borrowers have student loan debt greater than $100,000, with approximately 415,000 of them carrying student loan debt in excess of $200,000.

What do these numbers mean for you? They mean that debt repayment is typically an employee's foremost priority. It's not just the newly minted graduates, either – typically, student loan repayment is stretched over 10 years with close to an 11 percent default rate.

In this climate, don't be surprised when a desired prospective or current employee inquires how you can help them with their priority - debt reduction. Nor should you be surprised when you find that your debt-burdened employees are not using the savings opportunity of their retirement plan. Many employees feel too squeezed to both pay off their debt and save for their future. Those employees are frustrated not only by their lack of opportunity to save early, as is prudent, but also because they frequently miss out on employer matching contributions in their retirement plans.

Some employers are attempting to solve these issues. On Aug. 17, 2018, the IRS issued PLR 201833012. The PLR addressed an individual plan sponsor's desire to amend its retirement plan to include a program for employees making student loan repayments. The form of this benefit would be an employer non-elective contribution (a student loan repayment contribution, or "SLR contribution").

The design of the plan in the PLR would provide matching contributions made available to participants equal to 5 percent of compensation for 2 percent of compensation deferred, it includes a true-up. Alternatively, employees could receive up to 5 percent of compensation in an SLR contribution in the retirement plan for every 2 percent of student loan repayments they made during the year. The SLR contribution would be calculated at year-end. The PLR states that the program would allow a participant to both defer into the retirement plan and make a student loan repayment at the same time, but they would only receive either the match or the SLR contribution and not both for the same pay period. Employees who enroll in the student loan repayment program and later opt out without hitting the 2 percent threshold necessary for an SLR contribution would be eligible for matching contributions for the period in which they opted out and made deferrals into the plan.

The PLR asked the IRS to rule that such design would not violate the "contingent benefit" prohibition under the Tax Code. The Code and regulations essentially state that a cash or deferred arrangement does not violate the contingent benefit prohibition if no other benefit is conditioned upon the employee's election to make elective contributions under the arrangement. The IRS ruled that the proposed design does not violate the contingent benefit prohibition.

All that said, it is important to note that a PLR is directed to a specific taxpayer requesting the ruling, and is applicable only to the specific taxpayer requesting the ruling, and only to the specific set of facts and circumstances included in the request. That means others cannot rely on the PLR as precedent. It is neither a regulation nor even formal guidance. However, it does provide 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 will not run afoul of the contingent benefit prohibition.

Companies are increasingly aware of the heavy student debt carried by their employees, and are exploring a myriad of programs they can offer to alleviate this burden. This particular design is meant to allow employees who cannot afford to both repay their student loans and defer into the retirement plan at the same time the ability to avoid missing out on the "free money" being offered by their employer in the retirement plan (by essentially replacing the match they miss by not deferring with the SLR contribution they receive for participating in the student loan repayment program). This design is not meant to help employees accelerate their debt payoff. If that's your goal, you would have to do so directly into the student loan repayment program – there is no conduit to do so through the retirement plan.

While the IRS ruled in regard to the contingent benefit prohibition, the PLR states definitively that all other qualification rules (testing, coverage, etc.) would remain operative. Thus, if you wish to pursue adding such provisions to your retirement plan, you must take care as you undertake the design.

The facts provided in the PLR were very basic, and the plan design is very basic in that it requires deferral/student loan repayment equal to 2 percent for a 5 percent employer contribution (either match or SLR contribution) with no gradations. This is important because gradations could create separate testing populations for each increment of the SLR contribution plan, since it is a non-elective contribution, not a matching contribution. This could become a nightmare scenario for non-discrimination testing and administration.

Alternatively, to avoid the potential nondiscrimination testing issues, the benefit could be designed to exclude highly compensated employees. However, that still doesn't alleviate the potential administrative burden placed on your payroll and human resources teams. Most of the debt repayment programs are not yet integrated with retirement plan recordkeepers. That means that administering some of the interrelated elements of the two plans would have to be undertaken in-house.

There are more than a few consequential elements that you should be wary of while exploring opportunities to assist your employees and employment targets. In all cases it is recommended that you involve your retirement plan's recordkeeper, advisor and even – in some sophisticated design scenarios – outside counsel to make certain they: (1) don't inadvertently create qualification issues, (2) understand the potential for additional testing and perhaps additional financial considerations of the design; and (3) are prepared for any additional administration the program may require.

This month's employee memo gives ideas for eliminating student loan debt. Even if you are not yet offering this benefit, the memo offers other practical ideas to assist your employee population with student loan debt.

[1]*Forbes. Student Loan Debt Statistics In 2018: A $1.5 Trillion Crisis.*

About the Author, Joel Shapiro, JD, LLM
As a former practicing ERISA attorney Joel works to ensure that plan sponsors stay fully informed on all legislative and regulatory matters. Joel earned his Bachelor of Arts from Tufts University and his Juris Doctor from Washington College of Law at the American University.

Effective Employee Education

Fiduciary duty requires you to provide your employees and participants with educational opportunities so they can make informed investment decisions. It's not always easy to know what your participants need, want or will take advantage of. Using a simple framework for your educational program may increase the effectiveness of your program.

1. Provide a consistent, ongoing program using a variety of communication mediums. This can include group meetings, podcasts, online tools, one-on-one meetings or other mediums attractive to your participants.
2. Vary the content of your program to provide broad education. Content should include plan basics, such as Basic Investing/Getting Started, but may also include topics related to a participant's entire financial picture – e.g., Saving for College, Estimating Retirement Income Sources and Needs, Health Care Options – and other topics of consideration to a retiree's financial well-being.
3. Offer online and professional advice tools to help retirees determine how much they need to save and how they will invest their contributions.
4. Fully disclose to participants, in easily understandable terms, information about the fees associated with their different investment options.
5. Offer participants opportunities to discuss their risk tolerance level, and help them understand how much risk they are willing to take when investing for their retirement.
6. Consider allowing employees to take advantage of educational opportunities and/or one-on-one meetings during working hours. This helps send a message to employees that their employer values this important benefit and is interested in helping employees prepare for their future.
7. Survey employees to determine if they find the educational program valuable, are taking advantage of it, what would make it more attractive and other feedback they may have to help continuously improve the program.

Every plan and its participant base is different, and there is no one right structure for an educational program. By starting with the above and being willing to modify your program's offerings according to participant feedback, your educational program will get stronger, you will meet this responsibility and you may even see employee engagement increase!

Hey Joel! – *Answers from a recovering former practicing ERISA attorney*

Welcome to *Hey Joel*! This forum answers plan sponsor questions from all over the country by our in-house former practicing ERISA attorney.

Hey Joel,

What are the risks for late 5500 filings?

- *Tardy in Tallahassee*

Dear Tardy,

The main risk is the daily penalties that accrue from the IRS and DOL for each day the filing is not submitted past the deadline. There is a process you can go through that reduces the amount of daily penalties, but there is a filing charge associated with this process as well.

The DOL has a good Q&A document about the program for correcting a late filing: https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/dfvcp.pdf. Some of the penalty dollar amounts may have changed since this was published as they are adjusted on occasion.

Punctual and proud,

Joel Shapiro

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If you have a question for Joel, please send it to your plan advisor. It may be featured in a future issue!

Participant Corner: Don't Let Student Loan Debt Get in Your Way of Financial Success

This month's employee flyer gives participants ideas to assist in eliminating student loan debt. Download the flyer from your Fiduciary Briefcase at fiduciarybriefcase.com and distribute to your participants. Please see an excerpt on the next page.

If you find yourself in a position of not being able to pay off your student loan debt and save for your future, you're not alone. According to the New York Federal Reserve, more than two million student loan borrowers have student loan debt greater than $100,000, with approximately 415,000 of them carrying student loan debt in excess of $200,000.

Here are some steps you can take to help eliminate your student loan debt:

1. **Make a Budget**

Do you have a budget that you're following each month? If not, create one today! With a monthly budget you can track where you are spending your money and where you can cut back. Then take your savings and put it towards your student loans!

2. **Pay More Than the Minimum**

It's no secret that paying the minimum each month will not get you far. By paying more than the minimum you can attack the principal at a quicker rate. Then your loans will be paid off faster.

3. **Apply Raises and Tax Refunds to Your Student Loans**

When you get some extra dough from a raise or tax refund it may be tempting to run out and spend it. Wouldn't it be so much more beneficial to put any extra money you receive towards your debt? Doing this will get you to your goal of being debt-free much quicker.

4. **Find Out if Your Employer Offers a Student Loan Repayment Program**

Last year the IRS issued a Private Letter Ruling stating that companies offering a retirement plan can amend their plan to include a program for employees making student loan repayments. Under this program, employers make retirement plan contributions into the accounts of employees who are making student loan repayments.

This material was created to provide accurate and reliable information on the subjects covered but should not be regarded as a complete analysis of these subjects. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation.

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