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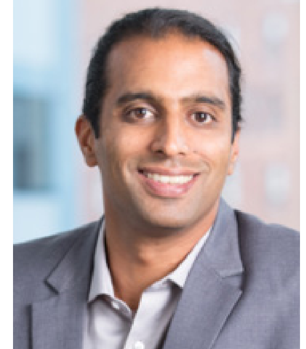
BENEFITS REPORT

IRS Issues Interim Guidance under Notice 2019-09 on Section 4960 Excise Tax for Tax-Exempt Organizations and Certain Governmental Entities



J. MARC FOSSE
AND YATINDRA PANDYA

JUNE, 2019

The Internal Revenue Service (IRS) has issued interim guidance in Notice 2019-09 (the "Notice") regarding the application of section 4960 of the Internal Revenue Code (the "Code"). Code section 4960 imposes an excise tax on applicable tax-exempt organizations (ATEOs) that pay covered employees either compensation in excess of $1,000,000 in a taxable year or an excess parachute payment. The rate of the excise penalty tax is based on the corporate income tax rate under Code section 11, which is currently 21 percent. (For a comprehensive discussion of Code section 4960, see our February 2018 newsletter article: *Tax-Exempt Organizations Face New Tax Penalty on Excess Compensation — Due Diligence and Minimization.*)

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One Embarcadero Center, 12th Floor
San Francisco, California 94111-3617
Tel: (415) 788-3111
Fax: (415) 421-2017
Email: info@truckerhuss.com

15821 Ventura Blvd, Suite 510
Los Angeles, California 91436-2964

www.truckerhuss.com

Trucker ✦ Huss is pleased to announce...

Trucker Huss, APC is pleased to announce its sponsorship of the American Bar Association (ABA) ERISA Basics National Institute, which was held June 5–7, 2019 in Washington D.C. The program was designed for in-house and union counsel, benefits specialists, private practitioners, litigators, and consultants.

The focus was on comprehensive ERISA topics, and Robert Gower spoke at the June 6 session: *ERISA Ethical Issues and Concerns*.

Background

An ATEO is defined broadly to include organizations that are exempt from federal income tax under Code section 501(a), governmental instrumentalities exempt from federal income tax under Code section 115, Code section 521(b)(1) farmers' cooperatives, and Code section 527(e)(1) political organizations.

A "related organization" is defined as any person or governmental entity that is related to the ATEO in one of the following ways:

- Controls or is controlled by the applicable tax-exempt organization;
- Is controlled by one or more persons that control the applicable tax-exempt organization;
- Is a supported organization (as defined in Code section 509(f)(3));
- Is a supporting organization (as defined in Code section 509(a)(3)); or
- In the case of a voluntary employee benefit association (VEBA): establishes, maintains, or makes contributions to the VEBA.

A "covered employee" is defined as one of the five highest compensated employees of an ATEO for any taxable years after December 31, 2016. Once an employee is determined to be a covered employee, the employee is a covered employee of the ATEO for all future taxable years. For that reason, tax-exempt organizations may eventually have more than five covered employees.

The excise tax applies to the following compensation:

- The portion of remuneration paid to a covered employee (other than an excess parachute payment) that is in excess of $1,000,000 in any taxable year beginning after December 31, 2018; or
- Any excess parachute payment.

An "excess parachute payment" is the amount by which payment of a "parachute payment" exceeds the base amount. A parachute payment is remuneration that is

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contingent on termination of employment and exceeds three times the covered employee's base amount. The base amount is the employee's average wages over the previous five-year period (or shorter, if applicable).

For purposes of Code section 4960, remuneration means wages subject to federal income tax withholding under Code section 3401(a). Excluded from this definition are payments from tax-qualified plans, Code sections 403(b) and 457(b) plans, payments for medical or veterinary services performed by a medical professional, and payments to a non-highly compensated employee as determined by Code section 414(q). Unlike excess parachute payments under Code section 280G, a parachute payment under Code section 4960 is not contingent on a change of control of the company, but on the employee's separation from employment with the employer. With respect to the base amount, Code section 4960(c)(5)(D) states the base amount should be determined using rules similar to Code section 280G(b)(3).

Notice 2019-09

The Notice states that the Department of the Treasury ("Treasury") and IRS intend to issue proposed regulations for Code section 4960 that will incorporate the guidance in the Notice, but it clarifies that any further guidance under Code section 4960 will be prospective and not apply to prior tax years. In the meantime, the Notice states that taxpayers may base their positions on good faith, reasonable interpretations of Code section 4960, and that taxpayers may rely on the positions in the Notice as a good faith, reasonable interpretation of the statute. The Notice consists of thirty-two pages of preamble followed by fifty-three pages of guidance in the form of Q&A and examples. Of the thirty-nine questions and answers, this article discusses the key takeaways.

Taxable Year

ATEOs should use the calendar year ending with or within the taxable year of the ATEO to calculate any excess remuneration or excess parachute payments. As a practical matter, this means that ATEOs will use the covered employees' calendar year taxable wages, which generally should be the same as the amount reported in Box 1 of the covered employees' Form W-2.

Applicable Tax-Exempt Organization

Government Entities

The Notice clarifies that a government entity (including a state college or university) is not an ATEO if the organization does not have a determination letter recognizing it as tax-exempt under Code section 501(a) or is not a governmental instrumentality that excludes income from taxation under Code section 115(1). Entities that are "government units" are not subject to income tax based on the doctrine of implied statutory immunity — a government unit is not subject to a tax unless there is a specific statutory provision authorizing the taxation. The Notice points out that a governmental entity will be treated as an ATEO if it has obtained a determination letter granting the entity tax exempt status under Code section 501(a). Some governmental entities have obtained determination letters granting them status as a 501(c)(3) organization because it affords better treatment for certain fundraising activities. According to the Notice, a governmental entity may voluntarily relinquish its tax exempt status pursuant to Revenue Procedure 2018-5 (or any successor procedure). However, the Notice points out that an entity that is a governmental unit may still be subject to the excise tax as a related organization.

Related Organizations

A related organization may be a nonstock organization, a taxable entity or a governmental entity, according to the Notice. Taxable entities include public and private corporations, partnerships, and trusts. The Notice makes clear that a related organization can be another ATEO.

Liability for Proportional Share of Excise Tax

In general, each organization in a related group of organizations is liable for its proportionate share of the excise penalty tax. The applicable amount is based on the ratio of the remuneration the organization paid over the total remuneration paid by all the organizations in the related group. Where an ATEO is also a related employer with respect to a covered employee, it is only liable for the greater of the tax it would pay as an ATEO or the related employer.

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Meaning of Control

As mentioned above, under Code section 4960(c)(4)(B)(i) and (ii), a related organization is defined as any person or governmental entity that controls the ATEO, or is controlled by the ATEO or one or more person who controls the ATEO. The Notice clarifies that "control" means a greater than fifty percent threshold with respect to: ownership in a corporation, profits or capital interest in a partnership, and ownership of a beneficial interest in a trust with beneficial interests. For nonstock corporations (including tax-exempt organizations and governmental entities), control means that more than fifty percent of the directors or trustees of the ATEO or nonstock organization are either representative of, or are directly or indirectly controlled by, the other entity or control one or more persons who control the ATEO.

Constructive Ownership

The Notice further explains that for purposes of determining whether an entity is a related organization, the general rules relating to constructive ownership under Code section 318 apply.

Covered Employees

Limited Services Exception

The limited services exception is applicable to remuneration paid to a covered employee who is a covered employee of at least two entities within a group of related organizations. In such instances, an organization may not have to count the covered employee as one of the five highest compensated employees of the ATEO if the ATEO pays less than ten percent of the employee's total remuneration as compared to that paid for by all related employers services he or she performed. However, the limited services exception is not applicable if there are no ATEOs in the group of related entities that pay the employee remuneration above ten percent of his or her total remuneration. In other words, the limited services exception only applies if at least one ATEO is responsible for paying the covered employee at least ten percent of his or her total remuneration.

Liability of Common-Law Employer

The common-law employer, as defined generally under federal tax law, is liable for the penalty under Code section 4960. The Notice states that only an ATEO has covered employees. However, a covered employee may have more than one common-law employer. If an employee has a common-law employer that pays his or her remuneration, and that common-law employer is related to the ATEO that employs the employee, then that related organization is liable for its proportionate share of the excise penalty tax.

Third-party Arrangements, Disregarded Entities, and Personal Service Corporations

The Notice states that liability for the excise penalty tax cannot be avoided by common-law employers paying remuneration to common-law employees through a third-party. The Notice also states that in the case of employment by a disregarded entity as defined under Treasury Regulation section 301.7701-3, the sole owner of the disregarded entity is treated as the common-law employer and, thus, is liable for the excise penalty tax. While the Notice does not treat a personal service corporation (PSC) as a common-law employee, it does caution that the IRS may assert that the individual owner of a PSC is, in fact, a common-law employee of the ATEO based on all the facts and circumstances.

Remuneration

Definition of Remuneration

As stated in Code section 4960(3)(c), remuneration is generally considered to be wages as defined under Code section 3401(a), excluding designated Roth contributions, and including amounts required to be included under Code section 457(f) when the compensation is no longer subject to a substantial risk of forfeiture. The Notice directs the taxpayer to Code section 3401(a)(1) through (a)(23) for more exceptions to gross income. As such, those exceptions to gross income under Code section 3401(a) are also excluded from the definition of remuneration for purposes of determining whether the covered employee is one of the five highest compensated and whether the covered employee has excess remuneration.

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Director's Fees as Remuneration

The Notice states that compensation paid to a member of the board of directors for serving in that capacity is not remuneration. However, if the individual also performs services for the organization for which he or she serves as a member of the board of directors, then compensation related to the performance of those services is treated as remuneration. Compensation that an employer pays to an employee to serve as a director of another organization is also remuneration.

Excess Parachute Payments Subject to Code Section 4960 Not Remuneration

In general, remuneration includes parachute payments. However, a parachute payment is not counted in remuneration if it is also subject to the excise penalty tax in its capacity as an excess parachute payment. In other words, the remuneration will not be subject to the penalty for being both an excess parachute payment and a payment in excess of $1,000,000.

Timing – Substantial Risk of Forfeiture

In general, remuneration is treated as paid on the date on which the right to the remuneration is not subject to a substantial risk of forfeiture as described under Code section 457(f)(3)(B). It is important to note that the Notice states that this timing rule is without regard to whether the arrangement under which the amount is to be paid is subject to Code sections 457(f) or 409A. In other words, the timing rule for determining when remuneration is treated as paid applies to all forms of remuneration. The Notice explains, in Q&A-13 and the examples thereunder, that the amount of remuneration treated as paid upon vesting is the present value of the future payments to which the participant has a legally binding right. Where the present value must be determined using reasonable actuarial assumptions, for example, those described in Treasury Regulation sections 1.457-12(c)(1) or 1.409A-1(c)(2)(i)(C) may be applied.

Medical and Veterinary Services by a Licensed Medical Professional

Remuneration paid to a licensed medical professional for medical or veterinary services is excluded from remuneration for purposes of determining excess remuneration and excess parachute payments.

Licensed Medical Professional

For purposes of Code section 4960, a licensed medical professional is an individual licensed under state or local law to perform medical services (including nursing services) or veterinary services.

Medical Care Defined by Code Section 213(d)(1)(A)

The Notice defines medical care as that defined by Code section 213(d)(1)(A) and the regulations thereunder. Practically speaking, this definition constitutes services for the diagnosis, cure, treatment or prevention of disease, including services for the purpose of affecting any structure or function of the body. With respect to veterinary services, because there is no Code section on point, the Notice instructs the taxpayer to use the rules for medical care and analogize them to services performed for an animal to determine if such services result in remuneration exempt from Code section 4960.

The Notice distinguishes medical service from administrative, managerial or teaching services, and instructs that a covered employee who receives remuneration for both medical and non-medical services must make a good faith, reasonable allocation between each. Furthermore, the Notice states that if an employment agreement or similar agreement sets forth the allocation, then that allocation must be applied unless the facts and circumstances demonstrate its use would be unreasonable, or unless the allocation was established for purposes of avoiding Code section 4960.

Excess Parachute Payments

A "parachute payment" is a payment contingent on an employee's separation from employment with the employer that equal or exceed three times the employee's base amount. The Notice clarifies that an "excess parachute

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payment" is the amount of parachute payment in excess of the base amount even though three times the base amount is the definitional threshold for a parachute payment. To be clear. the Notice points out that the excise tax is not calculated based on the amount of the parachute payment, but based on the amount of the excess parachute payment. However, the excise tax is not calculated based on the amount of the parachute payment, but based on the amount of the excess parachute payment. This is similar to the Code section 280G rules, and the Notice even incorporated some rules from the Code section 280G regulations. The Notice also provides a five-step process for identifying and calculating the penalties on excess parachute payments.

Contingent on a Separation from Employment

The preamble to the Notice explains that, in general, a payment is contingent on an employee's separation from employment if the payment is subject to a substantial risk of forfeiture, as defined in a manner consistent with Code sections 457(f) and 409A, at the time of separation and if the separation from employment causes the substantial risk to lapse. However, the Notice clarifies that the test is not applied similarly to the 280G "but for" analysis; instead, the analysis focuses on whether separation causes remuneration to vest or accelerates payment. The Notice states that a payment is contingent on a separation from employment only if there is an involuntary separation from employment, but it noted that this standard may be expanded in future guidance. It also clarifies that if a payment or benefit vested prior to separation from service, even if the payment or benefit will be paid upon separation from service, the payment of benefit is generally not contingent on the separation from employment unless the facts and circumstances demonstrate that the vesting actually was triggered or accelerated due to the involuntary termination. The Notice points out that there is no presumption similar to that under 280G that any payment made within 12 months is contingent. However, the acceleration of vesting of a payment in close proximity to the time of termination is taken into account in determining if the payment is a contingent payment. According to the Notice, there is no exclusion for reasonable compensation after the event; however, payments after termination of employment (such as post-termination consulting services) would not be treated as contingent if the employee is required to provide services to obtain the payments.

Reporting and Miscellaneous Items under Notice 2019-09

Notice 2019-09 instructs taxpayers that the taxes under Code section 4960 are reported and paid using IRS Form 4720. Each ATEO or related organization must file a separate Form 4720 by the 15th day of the fifth month following the end of the employer's taxable year, with the possibility of an extension. No estimated payments are due, rather the excise penalty tax is reported and paid annually.

In its penultimate Q&A, the Notice explains that, with respect to a related organization, remuneration paid by a publicly held corporation within the meaning of Code section 162(m)(2) or by a covered health insurance provider within the meaning of Code section 162(m)(6)(C) is taken into account for purposes of determining the excise penalty tax under Code section 4960. However, the amount of remuneration for which a deduction is disallowed under Code section 162(m) is not taken into account for purposes of the excise penalty tax under Code section 4960.

Conclusion

The Notice provides answers to many questions practitioners had about implementing Code section 4960, and it gives some clarity as to when the penalty will apply and how to calculate it. With this guidance, ATEOs can begin developing more comprehensive compensation policies and procedures beyond merely identifying who will be a covered employee and how much the potential excise penalty tax may apply. Because the guidance in the Notice is retroactive to 2018, ATEOs should consider whether this guidance can provide any relief with respect to the penalties last year. ATEOs need to think about potential changes to their compensation structure to identify compensation that may trigger this excise tax and determine whether alternate payments or benefits can be structured to avoid it. Also, ATEOs can review their organizational structures to potentially limit the number of covered employees subject to these penalties. Strategies to minimize application of the excise tax were previously discussed in the firm's February 2018 newsletter.

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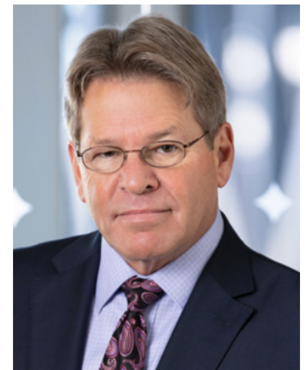
401(k) Student Loan Matching Programs — Private Letter Ruling 2018-33012



CRAIG P. HOFFMAN

JUNE, 2019

Much has been written about the impact student loan debt is having on the American economy. According to the *Wall Street Journal*, student loan debt is currently in excess of $1.5 trillion, the average debt is $34,000 per person, two million loans have defaulted over the last six years and 1,400 more defaults are occurring daily.[1] A new type of 401(k) contribution program is being touted as a way employers can help their employees pay off their loans and still save for retirement. But how do these programs work and when do they make sense?

Background

The American economy has been expanding for 10 years, and unemployment is at historically low levels. Employers must compete to fill open positions and retain existing workers. Increasingly, an employer-sponsored program to help employees with student loan payments is viewed as an important tool in recruitment and retention of workers. In addition, it is likely such a program can have a positive impact on employee productivity, due to the potential for reducing financial stress associated with student loan debt.

Some employers have adopted student loan repayment plans. Under these programs, the employer simply makes payments on behalf of the employee directly to the company servicing the employee's student loan. There are various third-party vendors facilitating this type of program.

Student loan repayment plans, however, can be expensive and should be considered in the context of the total benefit package provided to employees. And, it should be noted that the loan payments made by the employer are treated as taxable compensation to the employee. This means the employee must pay income tax on the employer payment amounts, and payroll systems must be integrated to take into account the additional compensation associated with those payments. It also means that both the employer and the employee will be responsible for payroll taxes (FICA/FUTA) on these amounts. This further drives up the employer's cost. An additional concern is that the program may be perceived as unfair to employees who do not have any student debt to repay and, as a result, receive no benefit from the program.

The Emergence of Student Loan Matching Programs

Recently, a new type of loan assistance program has emerged, namely, a Student Loan Matching Program (SLMP). Under this type of program, contributions are made to the employee's 401(k) account that "match" his or her student loan payments. These contributions are never subject to payroll taxes and are only included in income when distributed from the plan (unlike student loan repayment plans). In addition, SLMP contributions are typically made in lieu of regular matching contributions, which means that all employees can receive an equivalent benefit.

However, under IRS regulations the SLMP contributions are not treated as true matching contributions; rather, they are classified as employer nonelective contributions. This technical difference can cause problems in plan design. For this reason, plan sponsors should carefully consider their goals for the program and the demographics of their workforce before adopting an SLMP.

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Private Letter Ruling 2018-33012

The current interest in SLMPs was generated by IRS Private Letter Ruling 2018-33012 (the "PLR"), which was issued by the IRS on May 22, 2018, and released to the public on August 17, 2018.[2] A private letter ruling is an opinion issued to an individual taxpayer in which the IRS analyzes the tax consequences of a particular set of facts. The taxpayer who made the request is the only one who can rely on the analysis. Nevertheless, tax professionals look to private letter rulings for insights into IRS thinking on the tax laws. Private letter rulings are released anonymously by the IRS, but it has been widely reported that Abbott Laboratories (Abbott) requested the ruling with respect to its 401(k) plan.

The PLR describes how Abbott proposed to amend their 401(k) plan to add the SLMP feature. Under the plan's regular matching formula, employees who make at least a 2%-of-pay elective deferral contribution during a payroll period receive a matching contribution equal to 5% of compensation. The proposed SLMP contribution mirrors the regular matching formula. In other words, an employee who makes a student loan repayment equal to at least 2% of his or her pay during a payroll period receives a 5%-of-pay nonelective contribution.

Under the Abbott SLMP, an employee must sign up for the SLMP contribution and, by doing so, would become ineligible for the regular matching contribution. The employee can opt in or out of the SLMP contribution at any time and at all times would be permitted to make elective deferrals. Moreover, if an employee opts in but doesn't actually make a student loan repayment equal to 2% of compensation during a payroll period, that employee receives a so-called "true-up" matching contribution equal to 5% of compensation. To receive the true-up matching contribution or the SLMP contribution, the participant would need to be employed on the last day of the plan year. The regular matching contribution, however, is not conditioned on last day employment.

Based on this plan design, Abbott requested a very narrow ruling from the IRS: specifically, whether the SLMP contributions violated the so-called contingent benefit rule. This rule arises from IRC §401(k)(4)(A), which prohibits conditioning — directly or indirectly — any employer provided benefit (other than matching contributions) on whether an employee makes or doesn't make an elective deferral contribution.

The purpose of the contingent benefit rule is to prohibit plan sponsors from manipulating the 401(k) or 401(m) tests by conditioning a very desirable employee benefit (e.g., vacation days, group life insurance, disability benefits, etc.) on whether the employee contributes or does not contribute to the plan. The theory is that some benefits are particularly valuable to rank-and-file employees who would be forced to contribute to the plan to qualify for the benefit. This could improve the NHCE average deferral percentage which, in turn, would make it easier to pass the ADP test.

In the context of the PLR, the analysis of how the contingent benefit rule might apply focused on whether the SLMP contributions were in some way contingent on whether the participant made or didn't make elective deferral contributions. The PLR notes that the SLMP contributions are conditioned on whether an employee makes a student loan repayment rather than an elective deferral. Additionally, employees who opt into the program remain eligible to make elective deferral contributions. Consequently, employees are not required to make or not make deferrals to qualify for SLMP contributions. The IRS held that, under these circumstances, the contingent benefit rule would not be violated by the SLMP contributions.

Issues to Consider in Implementing an SLMP

Although Abbott received a favorable ruling from the IRS in regard to the contingent benefit rule, there are other challenges that must be considered before implementing an SLMP. The SLMP contributions are classified as nonelective contributions for purposes of nondiscrimination testing under IRC §401(a)(4) and coverage testing under IRC §410(b). Whether those tests can be satisfied will depend on who actually receives the SLMP contributions, how much each person receives, and the demographics of the plan (i.e., the breakdown between participating HCEs and NHCEs). The application of these tests in a

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diversified population cannot easily be predicted, as it will depend on who opts in to the SLMP feature and their status as either an HCE or NHCE. The following example illustrates the potential concern.

Assume XYZ Medical Clinic (XYZ) has 100 employees, 20 of whom are doctors who are classified as XYZ's only HCEs. Many of the doctors have large student loan balances from college and medical school. XYZ adds a SLMP feature to the XYZ 401(k) plan. 15 of the doctors and 15 of the NHCEs opt in and receive SLMP contributions. Assuming the only nonelective contributions for the year are the SLMP contributions, this arrangement would likely fail coverage testing. This is due to the fact that 75% of the HCEs (15/20) are benefiting as compared to less than 19% of the NHCEs (15/80). Even if the coverage test could be satisfied, passing the general test for nondiscrimination under IRC §401(a)(4) is likely to be challenging as well. An easy way to avoid this problem is to exclude HCEs from eligibility to receive SLMP contributions. This approach, however, might exclude the very people the employer hopes to benefit as would be the case with the XYZ Medical Clinic.

Another concern with adding an SLMP feature is the potential detrimental impact on the 401(k) and 401(m) tests (also known as the ADP and ACP tests). In this case a problem may arise because the employees receiving SLMP contributions are NHCEs who, as a result of the program, are no longer receiving regular matching contributions tested under the ACP test. This may lower the NHCE average making it more difficult to pass the test. In addition, some of these same employees may reduce or eliminate their elective deferral contributions, making it harder to pass the ADP test.

An additional concern is how to draft plan language to allocate the SLMP contribution. In a customized individually designed plan, it should be a rather straight-forward process to write language to add an SLMP feature. Those using pre-approved plans could take one of two approaches. The first would be to use the individual allocation group method that most preapproved plans include as an option. In this instance, each participant would be placed in his or her own individual allocation group. The employer would then adopt a resolution at year end designating the SLMP contribution for each participant. However, this could be unwieldy for a larger employer. As an alternative, an employer might find it easier to simply draft custom language for the preapproved plan. In most cases, a determination letter on the custom language could then be requested if the changes were not extensive.

It is also important to consider the anti-cutback rules found in IRC §411(d)(6) when amending a plan's allocation formula. The IRS position is that a plan amendment to change the plan's allocation formula is an impermissible cutback if adopted after a participant has satisfied the conditions for sharing in a particular year's contribution. The IRS believes this is true even if the contribution is discretionary.[3] There is some debate as to whether the IRS position is correct in this regard. Nevertheless, caution would dictate implementing the SLMP feature in a way that adheres to the anti-cutback rules.

Administration of the program must also be considered. How are employers going to verify that the employee actually made the student loan repayment? One way would be to mandate that the employee's payments to the company servicing the loan are made by payroll deduction and submitted by the employer. Otherwise, there would need to be a substantiation policy. Hiring a third-party vendor to administer the program is another option. In any case, substantiating that the loan payment was actually made is an important element of plan administration.

Legislative Proposals

Congress is also interested in the student debt issue and its effect on retirement savings rates. On May 13, 2019, Senator Ron Wyden (D-OR) introduced the Retirement Parity for Student Loans Act of 2019 (RPSLA).[4] Under RPSLA, if certain requirements are satisfied, matching contributions made with respect to student loan repayments are tested under the ACP test. (However, student loan payments are not treated as elective deferrals for purposes of the ADP test.)

Given the election cycle, it is not likely Congress will pass RPSLA in the current session of Congress. However,

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similar provisions have been included in the Retirement Security and Savings Act of 2019, co-sponsored by Senator Rob Portman (R-OH) and Senator Ben Cardin (D-MD).[5] This demonstrates that student loan 401(k) matching programs have bi-partisan support in Congress and are likely to be included in the next generation of pension reform.

Conclusion

Adding an SLMP feature to a 401(k) plan can be a very valuable benefit. Unlike student loan repayment plans, SLMP contributions are not subject to FICA/FUTA taxes and are only taxable to the employee when withdrawn from the plan. An SLMP benefit permits employees to build a retirement nest egg, while at the same time paying down their debt. It is also perceived as a more equitable approach since participants without student loans can receive a regular matching contribution, in lieu of an SLMP contribution, simply by contributing elective deferrals to the plan. However, designing a SLMP that will work within the constraints of the IRS regulations requires careful planning and may not always be achievable, depending on the demographics of the workforce.

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1 *Wall Street Journal*, June 7, 2019.

2 PLR 201833012, May 22, 2018.

3 See IRS Technical Advice Memorandum 9735001, February 20, 1997.

4 S. 1428, (116th Congress, 1st session).

5 1431, (116th Congress, 1st session).

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FIRM NEWS

On April 28–29, **Craig Hoffman** presented at several sessions of the 2019 NIPA Annual Forum & Expo (2019NAFE) in San Diego. Craig discussed the impact of current Washington legislative and regulatory initiatives, reviewed the past and current state of multiple employer plans, and explored the direction of the retirement plan industry. He also answered questions regarding defined contribution plans.

On May 8, **Kevin Nolt** was a presenter at the Annual Hood & Strong Compensation Payroll Seminar.

On May 15, **Sarah Kanter** was a panelist for a Northern California Employee Benefits Council event entitled: *Is Single-Payer Inevitable?* Among topics discussed were the likelihood of passage of a Medicare-for-all bill and what direct impact it would have on millions of people.

On May 16, **Marc Fosse** was a presenter for the Strafford webinar entitled: *New IRC 83(i) Election for Qualified Equity Grants: Deferral Opportunities for Stock Options and RSUs.* The webinar provided tax advisers with a practical guide to the deferral benefits of the new Section 83(i) Qualified Equity Grant election contained in the 2017 tax reform law.

On May 23, **Robert Gower, Craig Hoffman and Nick White** co-presented a Trucker Huss Webinar: *The New and Improved Self-Correction Alternatives Under EPCRS.* about the new rules and how to apply them immediately.

On June 12, **Clarissa Kang** was quoted in an article appearing in Law360 entitled "High Court May Deal a Blow to ERISA Class Actions." In that article, Clarissa commented on the potential impact of the U.S. Supreme Court's recent decision to hear two challenges to worker-friendly ERISA cases from the Second and Ninth Circuit courts of appeal.

On June 25, **Clarissa Kang** will be a panelist for the ABA Joint Committee on Employee Benefits webinar: *A Deep Dive: Who is an Employee?* Clarissa will discuss recent litigation, offering tips and best practices to attempt to avoid litigation when designing a plan.

Trucker Huss is pleased to announce…

- **Angel L. Garrett** was selected to be a member of the national Collaborative Bar Leadership Academy (CBLA). The CBLA is a joint initiative of the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession and the Commission on Disability Rights, Hispanic National Bar Association, National Asian Pacific American Bar Association, National Bar Association, National LGBT Bar Association and National Native American Bar Association. Congratulations, Angel!
- **T. Katuri Kaye** was featured in the Black Women Lawyers Association of California's May Newsletter in the "Member Spotlight."
- **Katuri** has also been elected to the 2019–2020 Board of the Black Women Lawyer's Association of Los Angeles.

The Trucker ✦ Huss *Benefits Report* is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of *Benefits Report* are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

Editor: Shannon Oliver, soliver@truckerhuss.com

In response to new IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this *Benefits Report*.

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Adrine Adjemian
aadjemian@truckerhuss.com
415-277-8012

Jahiz Noel Agard
jagard@truckerhuss.com
415-277-8022

Briana Desch
bdesch@truckerhuss.com
415-277-8062

Joseph C. Faucher
jfaucher@truckerhuss.com
415-277-8046

J. Marc Fosse
mfosse@truckerhuss.com
415-277-8045

Angel Garrett
agarrett@truckerhuss.com
415-277-8066

Robert R. Gower
rgower@truckerhuss.com
415-277-8002

Craig P. Hoffman
choffman@truckerhuss.com
415-788-3111

R. Bradford Huss
bhuss@truckerhuss.com
415-277-8007

Clarissa A. Kang
ckang@truckerhuss.com
415-277-8014

Sarah T. Kanter
skanter@truckerhuss.com
415-277-8053

T. Katuri Kaye
kkaye@truckerhuss.com
415-788-3111

Freeman L. Levinrad
flevinrad@truckerhuss.com
415-277-8068

Elizabeth L. Loh
eloh@truckerhuss.com
415-277-8056

Gisue Mehdi
gmehdi@truckerhuss.com
415-277-8073

Brian D. Murray
bmurray@truckerhuss.com
213-537-1016

Kevin E. Nolt
knolt@truckerhuss.com
415-277-8017

Yatindra Pandya
ypandya@truckerhuss.com
415-277-8063

Barbara P. Pletcher
bpletcher@truckerhuss.com
415-277-8040

Mary Powell
mpowell@truckerhuss.com
415-277-8006

Dylan D. Rudolph
drudolph@truckerhuss.com
415-277-8028

Tiffany N. Santos
tsantos@truckerhuss.com
415-277-8039

Robert F. Schwartz
rschwartz@truckerhuss.com
415-277-8008

Charles A. Storke
cstorke@truckerhuss.com
415-277-8018

Jennifer Truong
jtruong@truckerhuss.com
415-277-8072

Nicholas J. White
nwhite@truckerhuss.com
415-277-8016

PARALEGALS

Shannon Oliver
soliver@truckerhuss.com
415-277-8067

Susan Quintanar
squintanar@truckerhuss.com
415-277-8069

TRUCKER ✦ HUSS
A PROFESSIONAL CORPORATION
ERISA AND EMPLOYEE BENEFITS ATTORNEYS

One Embarcadero Center, 12th Floor
San Francisco, California 94111-3617
Tel: (415) 788-3111
Fax: (415) 421-2017
Email: info@truckerhuss.com

15821 Ventura Blvd, Suite 510
Los Angeles, California 91436-2964

www.truckerhuss.com