

DESIGNING EMPLOYEE BENEFITS TO ADDRESS EDUCATIONAL DEBT

Assisting Employees Reduce Educational Debt Through Employer-Provided Student Loan Repayment and Educational Assistance Programs

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Since last writing about employer-provided educational debt programs in the Fall 2018 issue of *Confero* in the article entitled “Designing Employee Benefits To Address Educational Debt” (reproduced below), there have been several developments. For example, the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) provided student loan relief by suspending federal student loan payments (which was extended twice to January 2021, with payments resuming in February 2021). The CARES Act also expanded Section 127 of the tax code through December 31, 2020 to allow employers to provide tax-advantaged payments, excludible from an employee’s gross income under a qualified educational assistance plan, toward employees’ student loans up to an overall \$5,250 for the calendar year for all qualified educational expenses. Thus, under those temporary provisions for qualified educational assistance plans, an employer could provide payment of the principal or interest on any qualified higher education loans as defined in Section 221(d)(1) of the tax code

for education of the employee. At the end of December 2020, Section 120 of the Taxpayer Certainty and Disaster Tax relief Act of 2020 (under Division EE of the Consolidated Appropriations Act of 2021) extended the tax code provisions to allow employers to provide such qualified educational assistance plan payments toward employees’ student loans through December 31, 2025.

It is also important to note that the Securing a Strong Retirement Act of 2020 (commonly referred to as SECURE Act 2.0), introduced in the House of Representatives October 27, 2020, includes a provision to allow employers to treat an employee’s student loan payments as elective deferrals for purposes of eligibility to receive employer matching contributions in 401(k), 403(b), 457(b) and SIMPLE IRA plans. Thus, if the SECURE Act 2.0 is ultimately enacted into law, employers would be able to design these plans to provide plan participants who are overwhelmed with student debt and unable to save for retirement with employer matching contributions (if applicable) while repaying

their student loans. There is also increasing momentum calling for the government to cancel at least a portion of outstanding student loan debts, which exceeds \$1.7 trillion in the United States.

These developments will continue to evolve and they must be monitored so that employer programs can be designed or updated accordingly. The extension of the qualified educational assistance plan provisions related to payment of student loans may be of particular interest to employers. Moreover, given the growing concern over increasingly unmanageable levels of student loan debt carried by employees, its impact on overall employee health and financial wellness, and an uncertain future where the skills needed to compete for the jobs of tomorrow continues to unfold, employers that design employee benefits to address educational debt will stand out as employers of choice and make an important contribution toward the effort to solve this debt crisis.

What follows is the full reproduction of my 2018 article on this topic, which illustrates how quickly certain issues addressed in that article have become outdated based on the current guidance, but serves as useful history as the topic of student loan debt takes on increased national importance:

It has been widely reported that student loan debt is at an all-time high, which in turn causes many workers financial stress and influences their decisions to delay family planning and home purchases. In addition, educational debt is often cited as a major reason why individuals are unable to save any additional compensation for retirement as well as meet their many immediate expenses. However, not only is educational debt an issue for young workers entering the workforce, but also it will become increasingly more prevalent as a financial

stressor as more workers find themselves in the position of re-skilling for future jobs as a result of increasing automation and artificial intelligence in the workplace. With renewed attention to these issues, and overall financial wellness initiatives, student loan repayment and educational assistance programs have been garnering increased interest as employers consider new ways to expand their employee benefit programs in a manner that will provide meaningful benefits to workers.



Employers that desire offering a student loan repayment program or educational assistance program to their employees should consider the following:

1 Taxable Student Loan Repayment Benefits

To date, a small percentage of private-sector employers offer student loan repayment assistance for expenses incurred prior to employment, which is taxable and includible in wages under current law. However, interest in these types of programs is growing. There is no required design for this type of program, but some studies show that a typical payment offered may be \$100 per month toward the principal balance of a student loan. There have been legislative proposals to exclude from gross income the amounts paid by an employer under student loan repayment assistance programs, but to date they have not moved forward (see e.g., the Student Loan Employment Benefits Act of 2016 (to exclude up to \$5,000 per year from income) and the Student Loan Repayment Assistance Act of 2015 (to exclude up to \$6,000 from income)).

Despite the current inclusion of this type of benefit in income, employees may still find this extra monthly payment attractive to assist

in the repayment of their monthly student loan bills. Also, it provides increased wages without adjusting base salary per se because the income is specifically attributable to the student loan repayment program. Employers interested in offering this type of program have latitude in their design and should consider how they wish to define eligibility, the types of education and loans that qualify for repayment assistance, amount of the repayment, communications, and administrative issues and coordination with other financial wellness programs, including service providers in this space that can integrate and facilitate employer payments to the educational institutions.

2 Potential Coordination of Student Loan Repayment with Retirement Plan Savings

There has been interest in finding a way to coordinate student loan repayments with employer contributions to defined contribution plans, such as the 401(k) plan, in order to avoid the immediate inclusion of such contributions in income. Obvious hurdles have included requirements to pass nondiscrimination and coverage tests for these plans and overall maintenance of qualified plan status. A recent private letter ruling has fueled renewed interest in the retirement plan integration approach.

In Private Letter Ruling 201833012, the IRS ruled that a 401(k) plan design allowing an employer to make a nonelective contribution for an eligible employee who makes a student loan payment under the program would not violate the contingent benefit rule under the tax code. These employees could also still make elective deferrals to the plan, but they would not be eligible for regular matching contributions; they would be eligible for the nonelective contribution and a true-up match. The employer also represented that it would not extend any student loans to employees eligible for the program. Notably, however, the ruling did not express an opinion on the federal tax consequences of any aspect of the issues referenced in the letter, and no opinion whether the plan satisfies the qualified plan requirements under the code.

This ruling has garnered widespread interest and more developments on this front are anticipated.

Employers interested in exploring similar plan design options should consider obtaining their own private letter ruling since such rulings may only be relied on by the applicant. Further, the approach should be vetted with service providers that conduct applicable testing for the plan to project passage of such tests. A request for a determination letter as to the qualified status of individually designed plans with such a feature would also be prudent, pending the IRS' status of such review programs or acceptance by the IRS for review of the plan as a new approach to plan design. Employers should also monitor future legislation that could potentially amend the tax code and provide a means for such integrated programs.



3

Qualified Educational Assistance Programs

Under tax code Section 127, employers can offer employees educational assistance tax-free up to \$5,250 per calendar year pursuant to a written program. The assistance can include reimbursement for tuition, fees and books as well as for graduate-level courses. The program must also pass applicable nondiscrimination tests. Employers can design their programs to reimburse the employee for qualified expenses, directly make payment to the educational institution, and/or the employer can provide the education to the employee. The educational assistance does not necessarily have to be work-related under these programs, but it cannot be for a sport, game or hobby unless reasonably related to the employer's business or required as part of a degree program.

These programs do not address existing student debt incurred prior to the time of employment with the employer. It will be important to monitor legislative proposals in this regard that could serve to address extension of these types of programs to existing loans. There have been legislative proposals to increase the amount of tax-free tuition assistance, which to date have not moved forward (see e.g., the Upward Mobility Enhancement Act of 2017 (to exclude up to \$11,500 of tuition assistance per calendar year)).

4

Working Condition Fringe Benefits

Under tax code Section 132, working condition fringe benefits, which are property or services to an employee that an employee could otherwise have deducted from income, are not included in gross income. These may include educational costs that maintain or improve required skills or are a condition to maintain a particular job as defined under tax code Section 162 and regulations thereunder. Expenses to meet minimum educational requirements of the individual's current business or as part of a program to qualify the individual for a new business would not qualify. Employers that can provide educational benefits that meet these tax code requirements may be able to provide such benefits on a tax-free basis.

Employers should carefully consider working condition fringe benefits as they introduce automation and artificial intelligence into the workplace. As it becomes increasingly more important for certain employees to re-skill and re-tool to work alongside machines, employer provision of the requisite education to perform these new jobs may qualify as a working condition fringe benefit.

Certainly, employees will find programs related to student loan repayment or educational assistance attractive and beneficial. Employers interested in offering these types of benefits should consider the available approaches under current law, communicate programs in a meaningful way, and monitor ongoing developments as new methods emerge in this trending area.



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