Internal Revenue Service

Department of the Treasury 200116050

Washington, DC 20224

Uniform Issue List Number: 401.29-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T4

Date:

JAN 23 2001

Legend:

Agency A =
Group B Members =
Statute T =

Dear

This is in response to your May 17, 1999, request for a private letter ruling, as supplemented by correspondence dated October 26, 2000, concerning whether Agency A may establish a 401(k) plan for the benefit of Group B Members who are employees of Agency A. The following facts and representations have been submitted in support of your ruling.

Agency A is an agency of the Federal Government which contracts with individuals (Group B Members) for personnel services abroad. The basic authority for the employment of Group B Members by Agency A is Statute T.

Based on the foregoing, you request the following ruling:

That Agency A, as an entity of the Federal Government, is authorized to establish a 401(k) plan for its Group B Members who are employees of Agency A.

Section 401(k)(4)(B)(ii) of the Internal Revenue Code (the Code) provides, in part, that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof.

The Code specifies the governmental employers (that is, State or local governments, or political subdivisions, agencies or instrumentalities thereof) that are not eligible to maintain 401(k) plans for the benefit of their employees. Accordingly, with respect to your ruling request, we conclude that Agency A, as an entity of the Federal Government, is authorized to establish a 401(k) plan for its Group B Members who are employees of Agency A.

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You have not requested, and we express no opinion in this ruling as to whether the Group B Members are employees of Agency A under the relevant provisions of the Code.

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

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4
Tax Exempt and Government Entities Division

Enclosures:
Notice of Intention to Disclose
Deleted copy of Letter Ruling

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