DEPARTMENT OF THE TREASURY
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Scott Perry
Member, U.S. House of Representatives
2209 East Market Street
York, PA 17402

Attention:

Dear Representative Perry:

I am responding to your email dated December 4, 2017, on behalf of your constituent, , who asked why he could not get a distribution from his 401(k) plan to pay off his daughter's college student loans.

Section 401(k) plans are employer-sponsored retirement plans that provide a means for employees to contribute part of their pay towards their retirement. To help ensure funds in the plan are available at retirement, Section 401(k) of the Internal Revenue Code (Code) prohibits early withdrawals from the plan. However, Section 401(k)(2)(B)(i)(IV) of the Code permits 401(k) plans to make distributions to employees in cases of hardship.

Regulations under Section 401(k) provide that a hardship distribution can only be made if the employee has an immediate and heavy financial need and a distribution is necessary to satisfy that financial need. Under the regulations, a 401(k) plan can make a hardship distribution to an employee if it is for "payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education." In case, paying off student loans would not qualify because it is not payment for the next 12 months of post-secondary education.

While we cannot give individual tax advice, as an alternative to taking a distribution from a 401(k) plan, a participant may be able to get a loan from the plan. Unlike a distribution, a loan would be tax-free, and a participant could have up to five years to repay it.

I hope this information is helpful. If you have additional questions, please call me or at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
Tax Exempt and Government Entities