

Internal Revenue Service

200116050
Department of the Treasury

Washington, DC 20224

Uniform Issue List Number: 401.29-00

contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T4

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.

246

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

E n d - :
Notice of Intention to **Disclose**
Deleted copy of Letter Ruling