200347019

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 28 2003

T:EP:RA:T3

Uniform Issue List: 401.29-00

ATTN:

Legend:
Agency A =

Group B Members =

Statute R =

Statute T =

Dear:

This is in response to your March 25, 2003, request for a private letter ruling, as supplemented by correspondence dated August 4, 2003, concerning whether Agency A may establish a plan described in §401(k) of the Internal Revenue Code ("IRC") 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 authorities for the employment of Group B Members by Agency A are Statutes R and T.

Based on the foregoing, you request the following rule:

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

IRC §401(k)(4)(B)(ii) 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 IRC specifies the governmental employers (that is, State or local governments, or political subdivisions, agencies or instrumentalities thereof) that are not eligible to maintain IRC §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 an IRC §401(k) plan for its Group B Members who are employees of Agency A.

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 IRC.

This ruling is directed only to the taxpayer that requested it. IRC §6110(k)(3) provides that it may no be used or cited by others as precedent.

Should you have any concerns with this letter, please contact ****, SE:T:EP:RA:T3, Badge ID **** at ****.

Sincerely,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
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