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Employee Benefits Corner

IRS Issues Student Loan Match Guidance— Save for Retirement While Repaying Student Loans

By Elizabeth Thomas Dold and David N. Levine

The Internal Revenue Service (“IRS”) has issued its first round of guidance on Section 110 of the Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022 (“SECURE 2.0”) that adds an optional student loan match provision to 401(k) plans (and certain other plans). The guidance is set forth in Notice 2024-63 and applies beginning next year, although plans can add the provision beginning this year (2024). This is the first official guidance on the concept that was first introduced through LTR 201833012, which allowed an employer to provide a nonelective contribution for student loan repayments (*in lieu* of a matching contribution). Under SECURE 2.0, the student loan match is treated as a true match, which is intended to simplify the coverage and nondiscrimination testing, but there are parameters that must be complied with to fall within this provision.

The Notice takes the first step into providing needed guidance to facilitate implementation of this new feature, and seeks comments on additional issues that may come with pending proposed regulations. The summary of the guidance, in question-and-answer (“Q&A”) format, is set forth below. This summary tracks the structure of the Notice, with a reference to the applicable Q&A from the Notice that more fully addresses the issue.

QSLP Match

- **What is a qualified student loan payment (“QSLP”) (A-1)?** A payment (1) made by an employee during a plan year in repayment of a qualified education loan “incurred by the employee” to pay for qualified higher education expenses of the employee, the employee’s spouse, or the employee’s dependent, (2) that does not exceed, when aggregated with other such payments for the year, the 402(g) limit (or lesser, 415(c) compensation) less elective deferrals made for the plan year, and (3) meets the certification requirement. The phrase “incurred by an employee,” means the employee must have a legal obligation to make the payment under the terms of the loan (*e.g.*, co-signer but not a guarantor).
- **What plans may include a QSLP match feature (A-2)?** This feature can be added to a Code Sec. 401(k) plan, a 403(b) plan, a Savings Incentive Match

PLan for Employees (“SIMPLE”) individual retirement account (“IRA”) plan, or a governmental 457(b) plan. (Special rules apply to SIMPLE IRA plans (E-1).)

- **What is an employee’s maximum QSLP for a year (A-3)?** In general, an employee’s maximum QSLP for a year is limitation applicable under Code Sec. 402(g) (or, if lesser, the employee’s compensation as described under Code Sec. 415(c)(3)), reduced by the employee’s elective deferrals for the year.
- **Can a plan include provisions that limit QSLP matches to only certain qualified education loans (e.g., loans for an employee’s own education, for a particular degree program, attendance at a particular school) (A-4, 5)?** No. All employees (except disaggregation rules under Reg. §1.410(b)-7(c)(4), such as Collective Bargaining Agreements (“CBA”) employees) eligible to receive matching contributions on elective deferrals, must be eligible for QSLP match (and *vice versa*). A plan that includes a definition of QSLP that covers only a subset of employees who have made QSLP payments is not permitted. But, it is permissible if an employee is excluded because they do not have a qualified education loan. The Notice includes several helpful examples.
- **May a QSLP match contributed for a plan year be based on a qualified education loan payment that was made during a different plan year (A-6)?** No, only an employee’s QSLPs that were made during a plan year are eligible to be counted for purposes of the employee’s QSLP match for that plan year. The Notice includes several helpful examples.

Employee Certification of QSLPs

- **What are the employee certification requirements that must be met (B-1, 2)?** A qualified education loan payment is a QSLP only if the following certification requirement is satisfied with respect to that payment. (A plan may require a separate certification for each QSLP or permit an annual certification that applies for QSLPs for a year.)
 - (1) the amount of the loan payment;
 - (2) the date of the loan payment;
 - (3) that the payment was made by the employee;
 - (4) that the loan being repaid is a qualified education loan and was used to pay for qualified higher education expenses of the employee, the employee’s spouse, or the employee’s dependent; and
 - (5) that the loan was “incurred by the employee.”
 The certification can be satisfied through affirmative certification by the employee (which for items (4) and
- (5) can include a loan registration process), or for items (1)–(3) may be made through independent verification/validation by the employer (e.g., QSLPs through payroll deduction) or through passive certification by the employee. A passive certification means a method of certification by which (i) an employee provides written information about a qualified education loan to a plan regarding items (4) and (5), (ii) information about items (1) and (2) is provided from the lender to the plan, including through an employer, (iii) the plan notifies the employee of the information (including, if the plan uses passive certification with respect to item (3), a statement that the employer assumes that item (3) has been satisfied (absent actual knowledge to the contrary)), and (iv) the employee is given a reasonable period to correct the information included in the employee notice. The Notice provides helpful examples, but does not include a sample certification.
- **Do the items of information required for the certification requirement need to be received annually by a plan (B-3)?** Information about items (1)–(3) must be received annually by a plan, but the information for items (4) and (5) does not need to be received annually by a plan if the employee registers the loan with the plan (but loan refinancing or changes must be received).

QSLP Match Procedures

- **What administrative procedures may a plan establish to implement a QSLP match feature (C-1)?** A plan may establish any reasonable administrative procedures to implement a QSLP match feature, which is a facts and circumstances determination (and procedures in the Notice meet this standard).
- **What administrative procedures may a plan establish with respect to QSLP match claim deadlines (C-2)?** A plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines (e.g., quarterly deadlines) for QSLP match claim submissions, provided that each QSLP match claim deadline is reasonable (again, a facts and circumstances determination). For example, an annual deadline three months after plan year-end is a reasonable deadline—providing a sufficient opportunity to collect and furnish claim submission documentation. (Note that there is no relief from Code Sec. 4979 excise tax, so an earlier deadline may be helpful.)
- **Must a plan require that an employee submit verification in support of an employee’s certification (C-3)?** No, the plan sponsor may simply rely on an

employee's annual certification without requiring any supporting verification. Alternatively, a plan can require verification for the QSLP, provided that the verification is made pursuant to established reasonable procedures (again, facts and circumstances determination—*e.g.*, reasonably available to a particular employee or for a particular qualified education loan). However, a plan may not establish independent verification or passive certification procedures that are not reasonably available with respect to a particular employee. For example, a plan may require independent verification of a payment based on the transfer of loan data to the plan's third-party service provider only if the plan permits an employee who does not have the ability to transfer loan data to such provider to verify the employee's qualified education loan payment by other reasonable means (*e.g.*, submit canceled checks or qualified education loan statements).

QSLP ADP Testing

- **For a plan that includes a QSLP match feature, how is actual deferral percentage (“ADP”) testing applied (D-1)?** There are three options to pass ADP testing: (1) a single ADP test for all employees, (2) Method 1—two tests, one main test for only those employees who make no QSLPs, and the other for all employees who make QSLPs, or (3) Method 2—two tests, one for all employees with no QSLPs and employees who make elective deferrals and QSLPs, and a separate test that automatically passes for employees who only make QSLPs. Method 1 may be helpful if non-highly compensated employees (“NHCEs”) who receive QSLP matches have a higher deferral percentage than highly compensated employees (“HCEs”) who receive QSLP matches. Method 2 may be helpful if HCEs who receive QSLP matches have a higher deferral percentage than NHCEs who receive QSLP matches. The Notice includes a helpful chart to describe the options.

Miscellaneous Issues

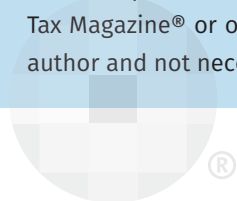
- **May a QSLP match feature be added as a mid-year change to a safe harbor plan, as described in Notice 2016-16 (E-2)?** Yes, a QSLP match feature may be added as a mid-year change to a safe harbor plan, provided that the notice and election opportunity conditions in section III.C of Notice 2016-16 are satisfied. Further, a mid-year change to a safe harbor plan to add a QSLP match feature is not a prohibited mid-year change.

- **May a plan provide for QSLP matches to be contributed at a different frequency than elective deferral matches (E-3)?** Yes, a plan may provide for QSLP matches to be contributed at a different frequency than elective deferral matches, provided that QSLP match contributions are required to be contributed not less frequently than annually. For example, a plan that provides for an annual QSLP match and allows elective deferral matches to be made each pay period.
- **In the event an employee's certification of a QSLP is determined to be incorrect, must a match based on that certification be corrected (E-4)?** No, even if an employee's certification of a QSLP is determined to be incorrect (*e.g.*, loan later forgiven), a match based on that certification does not need to be corrected—it will be treated as a QSLP match. But if corrected, all QSLP matches made under similar circumstances must be corrected.
- **Are plans required to provide for contributions of QSLP matches on a rolling basis as employees submit QSLP claims (E-5)?** No, plans may, but are not required to, provide for contributions of QSLP matches on a rolling basis.
- **How does Code Sec. 409A apply to a nonqualified deferred compensation (“NQDC”) plan that is linked to a plan with a QSLP match feature (E-6)?** The Code Sec. 409A relief provided with respect to the election-timing and anti-acceleration rules for certain changes in the amount credited under an NQDC plan that result from an employee's action or inaction with respect to elective deferrals extends to QSLPs as well.
- **What is the Effective Date of the Notice (Part IV)?** The Notice applies for plan years beginning after December 31, 2024. Before such date, a plan sponsor may rely on a good faith, reasonable interpretation of section 110 of the SECURE 2.0 Act (which, for example, the guidance in the Notice meets).

Next Steps

Plan sponsors and recordkeepers that are offering (or plan to offer) QSLPs should review the Notice to ensure that the processes anticipated to implement the student loan feature are sufficient and otherwise comply with these parameters—with particular focus on who is eligible for a QSLP match, what is the certification/validation process, participant communications, and how the ADP testing looks under the various methods (unless you have a safe harbor plan). Stay tuned for additional guidance in the form of proposed regulations (and if there are any concerns, the IRS is seeking comments through October 18, 2024).

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