

IRS Issues Guidance Addressing Matching Contributions on Student Loan Payments

by Lisa S. Boehm on August 28, 2024

Section 110 of the SECURE 2.0 Act of 2022 (“SECURE 2.0”) permits employers maintaining a 401(k), 403(b), governmental 457(b), or SIMPLE IRA plan to make matching contributions based on qualified student loan payments (“QSLPs”), effective for plan years beginning after December 31, 2023.¹

On August 19, the IRS issued [Notice 2024-63](#) (the “Notice”). The Notice provides welcome guidance on Section 110 of SECURE 2.0 that is applicable for plan years beginning after December 31, 2024.² The guidance, which is in a Q&A format with helpful examples, addresses a number of key plan administration issues to assist plan sponsors that have implemented or intend to implement a QSLP matching contributions feature. This post focuses on the guidance applicable to matching contributions under 401(k), 403(b), and governmental 457(b) plans.³

What is a QSLP?

A QSLP is a payment:

- 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, their spouse, or their dependent;⁴
- that does not exceed, when aggregated with other such payments for the year, the maximum QSLP amount for the plan year; and

¹ For plan years beginning before January 1, 2024, matching contributions could only be based on an employee’s elective deferrals and/or after-tax employee contributions.

² For plan years beginning before January 1, 2025, the Notice provides that plan sponsors may rely on a good faith, reasonable interpretation of Section 110 of SECURE 2.0 and that the guidance in the Notice is an example of a good faith, reasonable interpretation.

³ While the QSLP matching contribution rules applicable to these types of plans apply in a similar manner to SIMPLE IRA plans, there are differences, which are identified in the Notice but beyond the scope of this post.

⁴ The terms “qualified education loan” and “qualified higher education loans” are defined in Section 221(d) of the Internal Revenue Code (“Code”).

- certified for the plan year by the employee in a manner that satisfies the statutory certification requirement.

For a qualified education loan to be treated as *incurred by an employee*, the Notice explains that the employee who makes a payment on the qualified education loan must be legally obligated to do so under the terms of the loan. The Notice further explains that if an employee is a cosigner on a qualified education loan for the employee's dependent, both the employee and the dependent may have a legal obligation to make payments under the terms of the loan, but, *importantly*, only the individual making payments on the loan can receive QSLP matching contributions on account of those payments. If the employee is a guarantor, the employee has no legal obligation to make payments under the loan unless the primary borrower defaults under the loan.

The maximum QSLP amount for a plan year with respect to a 401(k), 403(b), or governmental 457(b) plan is equal to the applicable limit under Code Section 402(g) (or, if less, the employee's Code Section 415(c)(3) compensation),⁵ reduced by the employee's elective deferrals for the year.

Design Parameters for a QSLP Matching Contributions Feature

- A plan may not have a different rate of matching contributions on account of elective deferrals than the rate used for QSLP matching contributions.
- The plan may provide for QSLP matching contributions only on behalf of employees otherwise eligible to receive matching contributions on account of elective deferrals.
- All employees eligible to receive matching contributions on account of elective deferrals must be eligible to receive QSLP matching contributions.
- The two preceding bullet points, taken together, mean that a plan may not include provisions excluding employees from receiving QSLP matching contributions if those employees are eligible to receive matching contributions on account of elective deferrals and may not include provisions excluding employees from receiving matching contributions on account of elective deferrals if those employees are eligible to receive QSLP matching contributions. As shown by the examples in the Notice, a plan cannot include an eligibility condition (e.g., employment on the last day of the plan year) for QSLP matching contributions if that same condition is not included for matching contributions on account of elective deferrals (and vice versa).

⁵ For 2024, the Section 402(g) limit is \$23,000 (\$30,500, if the employee is eligible to make catch up contributions). Although alternative definitions exist, in general, an employee's Code Section 415(c)(3) compensation is the amount reported in Box 1 of the employee's Form W-2 plus the employee's elective deferrals and pre-tax contributions pursuant to a Code Section 125 cafeteria plan.

- However, the mandatory disaggregation rules in the regulations under Code Section 410(b) apply, so, for example, a plan may include a QSLP matching contributions feature that applies only to non-collectively bargained employees.
- A plan cannot limit a QSLP matching contributions feature to only certain qualified education loans, such as loans for an employee's own education, for a particular degree, or for attendance at a particular school.
- QSLP matching contributions for a plan year may not be based on qualified education loan payments that were made during a different plan year. Only an employee's qualified education loan payments that were made during a plan year may be taken into account for purposes of the employee's QSLP matching contributions for that plan year.
- A plan may provide for QSLP matching contributions to be made at a different frequency than matching contributions on account of elective deferrals, provided QSLP matching contributions must be contributed not less frequently than annually (e.g., a plan may provide that QSLP matching contributions are made to the plan once each year and matching contributions on account of elective deferrals are made each payroll period).
- A plan may, but is not required to, provide for QSLP matching contributions on a rolling basis as employees submit QSLP claims.
- A QSLP matching contributions feature may be added as a mid-year change to a safe harbor plan described in Code Sections 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12), provided that the notice and election opportunity conditions in Section 111.C of [IRS Notice 2016-16](#) are met.
- QSLP matching contributions must vest in the same manner as matching contributions on account of elective deferrals.

Employee Certification Requirement

For an employee's qualified education loan payment to be a QSLP, the employee must certify that the payment meets the requirements to be a QSLP. Plans may require a separate certification for each qualified education loan payment intended to qualify as a QSLP or permit an annual certification that applies for all qualified education loan payments intended to qualify as QSLPs for a year.

To satisfy the certification requirement, the following information must be received by a plan (including a third-party administrator acting on the plan's behalf):

- (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.

As a rule, the certification requirement for any of the five items may be satisfied through the employee's affirmative certification. Alternatively, the Notice provides that with respect to items (1) – (3), the certification requirement may be treated as met through passive certification (as described below) by the employee or through independent verification by the employer. Items (4) and (5) can be certified only through affirmative certification by the employee, including loan registration whereby an employee provides information to the plan regarding items (4) and (5) before the first loan payment is made for which the employee claims a QSLP matching contribution.

For purposes of the Notice, “passive certification” means a method of certification by which:

- information regarding items (1) and (2) is provided by the lender to the plan (including through the employer);
- the employee provides written information regarding items (4) and (5);
- 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); and
- the employee is given a reasonable period to correct the information included in the employee notice.

The Notice states that the employer is not obligated to inquire whether item (3) has been satisfied and that the employer may assume this item has been satisfied unless it has actual knowledge to the contrary. If the employee does not correct the information provided in the employee notice within the reasonable period, the employee is treated as certifying the information provided in the employee notice.

“Independent verification” means a method of certification by which a plan is able to validate the accuracy of items (1) - (3) (e.g., the employer permits the employee to make qualified education loan payments by payroll deduction).

Information regarding items (1) - (3) must be received annually by the plan, and information regarding items (4) and (5) does not need to be received annually if the employee registers the loan with the plan. If, however, a qualified education loan is refinanced or the information regarding

items (4) and (5) otherwise changes, updated information for items (4) and (5) must be received by the plan, through re-registration of the loan, for example.

The Notice includes examples of the various methods that may be used to satisfy the certification requirement.

If an employee's certification of a QSLP is determined to be incorrect (e.g., the qualified education loan on which QSLP matching contributions were based is later forgiven, causing the employee's certification of a QSLP to be incorrect), matching contributions based on that certification do not have to be corrected. If correction is pursued, QSLP matching contributions for a plan year may be corrected to the extent the employee's certification of a QSLP is determined to be incorrect, so long as all QSLP matching contributions made under similar circumstances for the plan year are corrected. If matching contributions based on an incorrect certification are not corrected, they may still be treated as QSLP matching contributions. The option not to correct an employee's QSLP matching contributions based on an incorrect certification does not apply with respect to operational failures in administering QSLP matching contributions, including failure to satisfy the employee certification requirement.

Administrative Procedures for QSLP Matching Contributions

A plan may establish any reasonable administrative procedures to implement a QSLP matching contributions feature. Whether procedures are reasonable is based on all relevant facts and circumstances. The Notice provides that reasonable procedures include, but are not limited to the following:

- A plan may establish a single deadline for a plan year or multiple deadlines (including, but not limited to, quarterly deadlines) for QSLP matching contributions claim submissions, provided each QSLP matching contributions claim deadline is reasonable. The Notice provides that an annual deadline that is three months after the end of a plan year is an example of a reasonable deadline.⁶
- A plan may rely on an employee's annual certification that a qualified education loan payment satisfies the requirements to be a QSLP, without requiring any supporting verification. If a plan requires this verification, the verification must be made pursuant to established reasonable procedures. A plan, therefore, may establish reasonable procedures that require independent verification that an employee has made payments during a plan year on a qualified education loan, or passive certification by an employee. A plan may not, however, establish independent verification or passive certification

⁶ The IRS notes, however, that if the potential imposition of Code Section 4979 excise taxes (as a result of QSLP matching contributions claims submissions being made after the 2½ month correction deadline) is a concern for plan sponsors, this concern may be avoided by either adopting reasonable claim deadlines that are earlier than 2½ months after the end of a plan year or adopting eligible automatic contribution arrangement provisions.

procedures that are not reasonably available with respect to a particular employee. To illustrate this point, the Notice includes the following 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 employees who lack this ability to verify their qualified education loan payment by other reasonable means (e.g., by submission of qualified education loan statements or cancelled checks).

ADP Nondiscrimination Testing Relief

In determining whether a 401(k) plan passes the ADP nondiscrimination test applicable to elective deferrals (the "ADP test"), the plan has two options:

- (1) apply a single ADP test for all employees; or
- (2) apply a separate ADP test for employees who receive QSLP matching contributions and a main ADP test for employees who do not.

If a plan elects option (2), it may use one of two methods described in the Notice. Under the first method, employees who are tested separately include all employees who receive QSLP matching contributions, regardless of whether they also make elective deferrals. Employees who do not receive QSLP matching contributions are taken into account under the main ADP test and are not included in the separate ADP test. The elective deferrals of the employees who receive QSLP matching contributions and also make elective deferrals are taken into account in performing the separate test and are excluded from the main ADP test.

Under the second method, employees who are tested separately include all employees who receive QSLP matching contributions, regardless of whether they also make elective deferrals. But unlike the separate ADP test under the first method, the elective deferrals of employees who receive QSLP matching contributions and also make elective deferrals (together with the elective deferrals of employees who do not receive QSLP matching contributions) are taken into account in performing the main ADP test and are excluded from the separate ADP test.

These alternative methods are intended to provide ADP testing flexibility – as the IRS observes in the Notice, the separate ADP test under the first method may be helpful if non-highly compensated employees ("NHCEs") who receive QSLP matching contributions have a higher deferral percentage than highly compensated employees ("HCEs") who receive QSLP matching contributions, and the separate ADP test under the second method may be helpful if HCEs who receive QSLP matching contributions have a higher deferral percentage than NHCEs who receive QSLP matching contributions.

What's Next?

The Treasury Department and the IRS anticipate issuing proposed regulations on Section 110 of SECURE 2.0 and invite comments on the guidance in the Notice and any other aspect of Section 110.



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If you have any questions regarding implementation of a QSLP matching contributions feature, please contact a member of our [Employee Benefits & Executive Compensation Group](#).



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