

IRS Releases Key Guidance on Student Loan Repayment Matching Contributions

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The IRS' newly released **Notice 2024-63** ("Notice") made a splash with its publication on August 19. The Notice contains guidance for retirement plan sponsors concerning matching contributions based on qualified student loan payments ("QSLPs") made by their participating employees. The interim guidance addresses several aspects of the implementation of Section 110 of the SECURE 2.0 Act of 2022 ("SECURE 2.0"), which amended the definition of matching contribution under Code section 401(m) to include, for the first time, employer contributions made to a defined contribution plan on account of an employee's QSLP. Although the guidance does not focus on governmental plans specifically, governmental plans who have been considering QSLPs should look to the guidance as they work with their internal teams, third-party administrators, and recordkeepers.

Although a private letter ruling ("PLR") issued to Abbott Laboratories in 2018 approved a nonelective contribution formula designed to mirror a match on student loan repayments, it did not provide nondiscrimination testing relief (and did not clearly apply to safe harbor plans) which hindered the adoption of student loan repayment matching in the ERISA plan space which also led to the slower development of solutions that could be used by governmental plans. The new SECURE 2.0 rule allows for a true match, avoids the nondiscrimination complexities raised with the PLR approach in the ERISA context, and provides welcome relief for plan sponsors.

The write-up below summarizes the Notice's administrative guidance; more fulsome guidance is yet to come from pending proposed regulations.

A. Overview - Key Provisions for QSLPs

1. Eligible Loans and Plans

- a. QSLPs may be made under 401(k), 403(b), and governmental 457(b) plans, as well as SIMPLE IRAs.
- b. 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, the employee's spouse, or the employee's dependents. A loan is "incurred" by the employee only if they have the legal obligation to make the payment under the terms of the plan – this includes a cosigner but not a guarantor (unless the primary borrower defaults under the loan).
- c. QSLPs are limited to the annual deferral limit under Code section 402(g) (or the employee's Code section 415 compensation, if less), reduced by the employee's deferrals.

2. QSLP Match Requirements and Limitations

- a. QSLP matches must be available to all employees who are eligible for elective deferral matches (and vice-versa). A QSLP match will not fail to be treated as “available” to an employee solely because the employee does not have qualified education loans. Additionally, QSLP matches must be made at the same rate and under the same vesting schedule as the plan’s regular match. The same conditions on eligibility for a QSLP match must apply to a regular match (e.g., “last day” requirement).
- b. A QSLP match for the plan year may only be made on QSLP payments made during the same plan year, but if allowed by the plan’s procedures, the match can be claimed the following plan year (e.g., by April 1 of the following year).
- c. A plan may establish a single QSLP match deadline for the plan year or multiple deadlines for QSLP match claim submissions (e.g., quarterly), provided that each match claim deadline is reasonable. An annual deadline that is three months after the end of the plan year is deemed reasonable.
- d. QSLP matches may be made at a different frequency than matching contributions are otherwise made under the plan, provided that the frequency is not less than annually. Although permissible, there is no requirement to make the QSLP match on a rolling basis (as a claim is made).
- e. The Notice does not allow a plan sponsor to limit the types of loans that will qualify for a QSLP match – for example, the plan cannot limit QSLPs to loans for the employee’s own education, for a particular degree program, or for attendance at a particular school. It also does not permit plan sponsors to exclude from QSLP matches employees of an individual employer, business unit, division, location, or other similar group (unless a QSLOB exists).

3. Employee Certification of QSLPs

- a. Employees must self-certify that the loan payment satisfies the requirements to be a QSLP. A plan may require a separate certification for each loan payment or an annual certification.
- b. The certification must include: (1) the amount of the loan payment; (2) the date of the loan payment; (3) that the payment was made by the employee, which may be automatic if the loan payments are made through payroll deduction or if information is provided by the loan lender; (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. A mix of methods from independent verification, affirmative certification (which can include “registering” the loan with the plan by providing information about the loan before the initial QSLP match), and passive certification (i.e., negative consent) are available to help facilitate this process.
- c. If a qualified education loan is refinanced or the information contained in items (4) and (5) above otherwise changes, updated information must be received by the plan, which may be through re-registration of the loan.
- d. The plan may (but is not required to) require an employee to submit verification in support of the certification, provided that the verification is made pursuant to established reasonable procedures (which is a facts and circumstances test). For example, a plan can require independent verification based on the transfer of loan data to the plan’s third-party service provider but must accept other methods if the employee cannot transfer such data (e.g., submit cancelled checks or qualified education loan statements).

B. Effective Dates

The Notice applies to plan years beginning after December 31, 2024, although plan sponsors that offered QSLP matches in 2024 may rely on a good faith, reasonable interpretation of section 110 of the SECURE 2.0 (which includes compliance with the Notice).

C. Plan Amendments

Plans may add the QSLP feature for plan years beginning after December 31, 2023, although the adopting timing of plan amendments remain subject to the delayed SECURE 2.0 amendment deadline. Plan sponsors may want to wait on adopting plan amendment language, as section 110(g) of SECURE 2.0 requires that IRS issue model amendments that plans may adopt to implement QSLP matches.

D. Next Steps

Plan sponsors that already offer QSLPs, or are planning to offer QSLPs for plan year 2025, should review the Notice with their recordkeeper and see what, if any, changes are necessary to comply with the Notice.

The Treasury Department and the IRS are expected to issue proposed regulations with respect to QSLPs and invite comments on the Notice, including comments on passive certification or independent verification, the impact of later elective deferrals for plans that provide QSLP matches more frequently than annually, reasonable procedures for QSLP matches, and the impact on SIMPLE IRAs and SIMPLE 401(k) plans.

Comments must be submitted in writing on or before October 18, 2024.

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