

August 26, 2024

## IRS Issues Guidance Regarding Matching Contributions Based on Eligible Student Loan Payments in Qualified Retirement Plans

The Internal Revenue Service (IRS) issued Notice 2024-63 providing guidance for qualified retirement plans that implement matching contributions based on an employee's qualified student loan payment ("QSLP"). Notice 2024-63 is in question-and-answer format, illustrating several plan administrative issues in various examples.

### **BACKGROUND – MATCHING CONTRIBUTIONS BASED ON ELIGIBLE STUDENT LOAN PAYMENTS:**

Section 110 of the SECURE 2.0 Act added and amended several sections of the Internal Revenue Code ("Code") to address QSLPs and called for the Secretary of the Treasury to prescribe regulations regarding QSLPs.

- A retirement plan for these purposes generally includes a 401(k) defined contribution plan, a 403(b) plan, a governmental 457(b) plan, including the 401(a) or 403(b) plan sponsored by the same employer to which 457(b) salary deferral matches and QSLP matches will be funded, and SIMPLE IRA plans (collectively referred to as the "Plan").
- Code Section 401(m) was amended to identify that matching contributions include employer contributions made to a Plan on account of an employee's QSLP. A QSLP is defined as an employee in repayment of a qualified education loan incurred by the employee to pay qualified higher education expenses, subject to:
  - 1) The amount limitation;
  - 2) The certification requirement.
- Code Section 401(m)(13) was added, and provides, in part, that QSLP matches shall be treated as matching contributions if the following requirements are satisfied:
  - 1) The plan provides elective deferral matches at the same rate it provides QSLP matches;
  - 2) The plan provides QSLP matches only on behalf of employees otherwise eligible to receive elective deferral matches;
  - 3) All employees who are eligible to receive elective deferral matches are eligible to receive QSLP matches under the plan; and
  - 4) The plan provides that QSLP matches vest in the same manner as elective deferral matches.
- Other Code Sections, including Section 408(p)(2)(F) for SIMPLE IRA plans, Section 403(b)(12)(A) for 403(b) plans and Section 457(b) for governmental 457(b) plans, were added or amended to implement rules that are generally analogous to the QSLP match rules set forth in Section 401(m).

### **GUIDANCE PROVIDED IN NOTICE 2024-63**

**QSLP Defined.** A QSLP is 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 section 401(m)(4)(D)(i) amount limitation for the plan year, and
- (3) certified for the plan year by the employee in a manner that satisfies the section 401(m)(4)(D)(ii) certification requirement.

The employee must have a legal obligation to make the loan payment under the terms of the loan for it to be considered a QSLP.

**Amount Limitation.** With the exception of SIMPLE IRA plans, an employee's maximum QSLP is limited to the lesser of 1) the annual section 402(g) limit, or 2) the employee's 415 compensation, reduced by the employee's elective deferrals, or salary deferrals for governmental 457(b) plans, for the year. Although the limitation applicable under section 402(g) is not applicable to section 457(b) plans, the limitation under section 402(g) is the same dollar amount as the applicable dollar limit under section 457(e)(15)(A).

For SIMPLE IRA plans, an employee's maximum QSLP is limited to the lesser of 1) applicable dollar amount under section 408(p)(2)(E) (after application of section 414(v)) for the year, or 2) the employee's 415 compensation, reduced by any other elective employer contributions the employee elected for the year.

**Uniformity Requirement.** All employees eligible to receive elective deferral matches under the terms of the plan must also be eligible to receive matches on QSLP and all employees eligible to receive matches on QSLP must also be eligible to receive matches on elective deferrals. This uniform treatment applies to all employees covered by a plan, so that employees may not be excluded from QSLP matches on an individual employer, business unit, division, location, or other similar basis. However, employees subject to mandatory disaggregation with different QSLP treatment, such as collectively bargained vs. non-collectively bargained employees, will not violate the uniformity requirement.

**Timing.** An employee must make the QSLP during the plan year for which the match is allocated. For example, a qualified employee loan payment made after the end of the plan year but prior to the claim deadline for a QSLP match for a given plan year is not a QSLP for that plan year but may be counted as a QSLP for the plan year in which it was made.

**Certification.** A qualified education loan payment is a QSLP only if the certification requirement is satisfied with respect to that payment. A plan can require certification for each payment intended to be a QSLP or an annual certification for all the payments intended to be QSLPs for the plan year.

For a qualified education loan payment to be considered a QSLP, there are five items of information that must be certified:

- 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, meaning that the employee has a legal obligation to make a payment under the terms of the loan.

The notice described three possible alternative methods of certification:

- 1) **Affirmative Certification, With or Without Registration.** The participant can certify all five items with each loan payment or annually. Alternatively, the participant can register the loan once with sufficient information to certify items (4) and (5) before the first loan payment is made for which the employee claims a QSLP match. Subsequently, the participant will annually certify items (1), (2), and (3) when the QSLP match is claimed for a given plan year.
- 2) **Registration and Independent Verification through Payroll Deduction.** Independent verification is a method of certification meant to validate the accuracy of items (1), (2), and (3), and can be satisfied if the employer permits qualified education loan payments to be made via payroll deduction. In this scenario, the participant can also register the loan once with sufficient information to certify items (4) and (5) before the first loan payment is made for which the employee claims a QSLP match.
- 3) **Registration and Passive Certification.** Passive certification is a method of certification by which (i) the participant registers the loan as previously described to certify 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 a statement that the employer assumes that item (3) has been satisfied, and (iv) the employee is given a reasonable period to correct the information included in the employee notice. Under this method, the employer does not have an obligation to inquire whether item (3) has been satisfied and may assume it has unless the employer has actual knowledge to the contrary. The employee is treated as certifying the information in the employee notice if the employee does not correct the information within the reasonable period.

**Reasonable Procedures.** A plan may establish any reasonable administrative procedures to implement a QSLP match feature, which are based on all relevant facts and circumstances. Reasonable procedures are not limited to those described in the notice; however, those described in the notice are deemed to be reasonable.

For example, a plan can establish a single QSLP match claim deadline for a plan year or multiple deadlines for QSLP match claim submissions, provided that each QSLP match claim deadline is reasonable. However, a plan cannot require a single certification method that is not reasonably available to all employees eligible for a QSLP match without also adopting other reasonable certifications.

**ADP Testing.** A 401(k) plan that requires an ADP test and includes a QSLP match feature may apply a single ADP test for all employees or may apply a separate ADP test for employees who receive QSLP matches and a main ADP test that includes employees who do not receive QSLP matches. If a plan chooses to perform a separate test for employees who receive QSLP matches, they can utilize one of the following methods:

- **Method 1 – Separate by Employee.** Include only employees who did not receive QSLP matches in the main ADP Test, and all employees who received QSLP matches in the separate test. In this method, any elective deferrals made by employees who received QSLP matches would be included in the separate test.
- **Method 2 – Separate by Elective Deferral.** Include all elective deferrals in the main test, including those from employees who received QSLP matches and separately test employees who received QSLP matches but did not make elective deferrals.

**Miscellaneous Guidance.** The guidance clarifies that a plan may provide for QSLP matches to be contributed at a different frequency than elective deferral matches, including safe harbor matches, but at least annually. Additionally, plans may, but are not required to fund QSLP matches on a rolling basis as claims for QSLP match are submitted.

The guidance further clarifies that a QSLP match feature is not a prohibited mid-year change to a safe harbor plan and may be added mid-year provided that the advanced notice and election opportunities are satisfied.

Finally, the guidance provides that even if an employee's certification of a QSLP is determined to be incorrect, a match based on that certification does not need to be corrected. However, the ability not to correct a QSLP match based on an incorrect certification does not apply with respect to an operational failure in administering a QSLP match feature, including a failure to satisfy the certification requirement.

**EFFECTIVE DATE.** The guidance in Notice 2024-63 applies for plan years beginning after December 31, 2024. A plan sponsor may rely on a good faith, reasonable interpretation of section 110 of the SECURE 2.0 Act for plan years beginning before January 1, 2025.

**FUTURE GUIDANCE.** The Treasury Department and IRS anticipate issuing regulations with regard to Section 110 of the SECURE Act 2.0 and request comments on:

- (1) Whether additional guidance would be helpful relating to passive certification or independent verification;
- (2) Whether, for a plan that provides for QSLP matches to be made more frequently than annually, guidance would be helpful in the case of an employee who receives a QSLP match before it is known whether subsequent elective deferrals will reduce the employee's maximum QSLP for the year;
- (3) Whether additional examples of reasonable procedures would be helpful with respect to QSLP matches;
- (4) Whether additional guidance would be helpful concerning the application of the QSLP rules to SIMPLE IRA plans; and
- (5) Whether additional guidance would be helpful concerning the application of the QSLP rules to SIMPLE 401(k) plans.

Voya will continue to monitor and communicate future developments.

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