

**MEMO# 35810**

August 28, 2024

# IRS Guidance for Qualified Student Loan Payment Matching Contributions

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Guidance for Qualified Student Loan Payment Matching Contributions

IRS on August 19, 2024, issued Notice 2024-63, "Guidance Under Section 110 of the SECURE 2.0 Act with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments."[\[1\]](#) As of the date of this Memo, the Notice has not been published in the Federal Register.

## **SECURE 2.0 Act § 110**

Section 110 of the SECURE 2.0 Act permits student loan payments to be treated as elective deferrals for purposes of matching contributions under a plan.[\[2\]](#) Section 110 allows employers to modify their 401(k), 403(b), SIMPLE IRA, or 457(b) plans to provide that employer matching contributions under a plan will be made on behalf of employees who make "qualified student loan payments" (QSLPs). Employees must certify annually that they have made a QSLP. Section 110 is effective for plan years beginning after December 31, 2023.

## **What is a QSLP?**

A QSLP is a payment made by an employee to repay a qualified education loan that was incurred by the employee to pay qualified higher education expenses, subject to certain limitations and certification requirements.[\[3\]](#) A qualified education loan is any indebtedness, incurred by a taxpayer solely to pay qualified higher education expenses, provided that such expenses are incurred on behalf of the taxpayer (including their spouse or any dependent at the time the indebtedness was incurred), paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and attributable to education furnished during a period when the recipient was an eligible student.[\[4\]](#)

## **IRS Notice 2024-63**

The Notice provides guidance in Q&A format. We highlight a number of significant points below.

## **Obligation to Make Payments**

For a loan to be treated as incurred by the employee, the employee must have a legal obligation to make payments under the terms of a loan. While this includes a cosigner (for example, where an employee cosigns a loan for a dependent, both the dependent and the employee have a legal obligation to make payments under the terms of the loan), only the individual making payments under a loan may receive a QSLP match as to such payments. Unlike cosigners, guarantors generally do not have a legal obligation to make payments under a loan—unless the primary borrower defaults under the loan.[\[5\]](#)

## **Limits on QSLPs**

Qualified education loan payments can be QSLPs only to the extent they do not exceed the applicable § 402(g) limit (or if lesser, the employee's compensation pursuant to Code § 415(c)(3)), reduced by any employee elective deferrals for that year. Governmental 457(b) plans are subject to the same limits, even though the § 402(g) limit and the term "elective deferrals" do not directly apply to such plans.[\[6\]](#) Additionally, a QSLP match may be contributed only based on qualified education loan payments made in the same plan year.[\[7\]](#) To the extent QSLP match contributions are made, they may be contributed to a plan at a different frequency than elective deferral matches—provided that the QSLP match contributions are made at least annually.[\[8\]](#)

A plan may not limit QSLP matching contributions to a subset of employees eligible to receive elective deferral matches, or to certain types of education loans such as loans for an employee's own education, for a particular degree programs, or for attendance at a particular school.[\[9\]](#) A plan also cannot exclude from QSLP matching contribution employees eligible to receive elective deferral matches; or exclude employees from receiving elective deferral matches if they are eligible to receive QSLP matches. These limitations also prohibit different eligibility requirements for an elective deferral match and a QSLP match. However, certain subsets of employees—including collectively bargained employees—may be excluded pursuant to applicable plan disaggregation rules under 26 C.F.R. § 1.410(b)-7(c)(4).[\[10\]](#)

## **Employee Certification of QSLPs**

Consistent with section 110, the Notice confirms that a qualified education loan payment is a QSLP only if the applicable certification requirements are met, either for each qualified education loan payment or annually. The plan must receive the following information:[\[11\]](#)

- 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 the loan was used to pay for qualified education expenses of the employee or their spouse or dependent; and
- 5) That the loan was incurred by the employee.

The Notice permits certification of this information by various means:[\[12\]](#)

- Affirmative certification by the employee, including as to items 4 and 5 though loan

registration whereby an employee provides information to the plan before the first loan payment as to which the employee claims a QSLP matching contribution (if a loan is registered, items 4 and 5 need only be updated if the loan is refinanced or this information otherwise changes<sup>[13]</sup>);

- Independent verification by the employer as to items 1 – 3, whereby the employer can validate the accuracy of the information—such as through loan payments made via payroll deduction; and
- Passive certification by the employee, whereby (i) the employee provides information as to items 4 and 5 to the plan in writing, (ii) the lender provides information as to items 1 and 2 to the plan (including through the employer), (iii) the plan notifies the employee of the information, including, if the employer uses passive certification for item 3, a statement that the employer assumes item 3 is satisfied, and (iv) the employee has a reasonable period to correct information included in an employee notice. If the employee does not correct the information contained in the notice, the employee is treated as having certified the information.

#### **Other Issues - Administrative Procedures, ADP Testing, Corrections**

A plan may implement any reasonable administrative procedures to implement a QSLP match feature.<sup>[14]</sup> Reasonableness is determined based on all relevant facts and circumstances, including whether QSLP matching contributions are effectively available to all eligible employees and whether the procedures promote compliance with the QSLP match requirements. The Notice sets out examples of reasonable procedures.<sup>[15]</sup>

The Notice provides alternative methods for ADP testing of a QSLP match feature. In addition to applying a single ADP test for all employees, a plan may instead elect to perform separate ADP testing for employees who receive QSLP matching contributions and for all other employees.<sup>[16]</sup> The Notice provides two alternatives for separate testing and explains that these alternate methods are designed to help plans with a QSLP match feature pass ADP testing.

A QSLP matching contribution does not need to be corrected (and is still treated as a QSLP matching contribution) if an employee certification of a QSLP is later determined to be incorrect—though correction is generally permitted, provided all QSLP matches made under similar circumstances also are corrected.<sup>[17]</sup> A plan must correct an incorrect QSLP match, however, where the incorrect match is due to an operational failure in administering a QSLP match feature (including a failure to satisfy the certification requirement).

#### **What about SIMPLE IRAs?**

SIMPLE IRAs generally are subject to the same QSLP matching contribution rules that apply to 401(k), 403(b), and governmental 457(b) plans, except for rules that relate to requirements that do not apply to SIMPLE IRAs (such as nondiscrimination testing). In addition, an employee's maximum QSLPs for a given year are calculated differently for SIMPLE IRA plans.<sup>[18]</sup>

#### **Effective Date**

The guidance in the Notice is applicable for plan years beginning after December 31, 2024. For plan years beginning on or before this date, plan sponsors may rely on a good faith, reasonable interpretation of section 110.<sup>[19]</sup> IRS/Treasury consider the guidance in the Notice to be an example of a good faith, reasonable interpretation of section 110.

## Request for Comments

IRS and Treasury request comment on both the Notice and on section 110 generally, and specifically on a number of issues listed below. Comments are due 60 days after the Notice is published in the Federal Register. IRS and Treasury also note that they anticipate issuing proposed regulations under section 110, though no timing for proposed regulations is indicated.

IRS and Treasury specifically request comments on the following:

- 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 early in a year 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.

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## Notes

[1] IRS Notice 2024-63 (published Aug. 19, 2024) ("Notice"), available at <https://www.irs.gov/pub/irs-drop/n-24-63.pdf>.

[2] For an overview of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[3] Internal Revenue Code ("Code") § 401(m)(4)(D); Notice Q&A A-4.

[4] Code § 221(d)(1).

[5] Notice, Q&A A-1. The Notice does not elaborate on the circumstances—if any—under which a guarantor to a loan may receive a QSLP match.

[6] Notice, Q&A A-3.

[7] Notice, Q&A A-6.

[8] Notice, Q&A E-3. ICI had requested clarification as to the required frequency for allocating QSLP matching contributions in a comment letter to IRS and Treasury, and

specifically requested that any guidance permit flexibility to allocate such matching contributions no less frequently than annually. See ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

[9] Notice, Q&A A-4.

[10] Notice, Q&A A-5.

[11] Notice, Q&A B-2.

[12] Notice, Q&A B-2.

[13] Notice, Q&A B.3.

[14] Notice, Q&A C-1.

[15] See Notice, Q&A C-2, C-3.

[16] Notice, Q&A D-1.

[17] Notice, Q&A E-4.

[18] Notice, Q&A E-1.

[19] Notice, sec. IV.