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IRS Issues Guidance on Employer Matching Contributions for Student Loan Repayments

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The SECURE 2.0 Act of 2022 ("SECURE 2.0") permits employers to match student loan payments made by employees under 401(k), 403(b), governmental 457(b), or SIMPLE IRA plans in plan years beginning on or after January 1, 2024. This is an optional feature that may help employees who have prioritized making student loan payments over elective deferrals to avoid losing out on matching contributions for which they are eligible (see our prior blog post).

On August 19, 2024, the IRS published Notice 2024-63, providing interim guidance regarding employer matching contributions made to retirement plans on account of employees' qualified student loan payments ("QSLPs"). The Notice lays out guidance, in question-and-answer format, pertaining to what constitutes a QSLP, the requirements for ensuring a QSLP's qualified status, certification procedures, limitations involving nondiscrimination testing, and safe harbor features.

The following is a summary of the key points addressed in the Notice:

- Definition of 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. A QSLP may be made on behalf of the employee's spouse or the employee's dependent, but only if the employee has a legal obligation to make the payment (*e.g.*, as a cosigner of the student loan).
- Annual Limit: The total amount taken into account for the matching contribution, including both employee elective deferrals and loan repayments, may not exceed the annual deferral limit in effect each year ($23,000 for 2024 for 401(k) and 403(b) plans) or, if less, the employee's compensation.
- Uniform Treatment: A plan that provides for a QSLP match must match all QSLPs and must provide QSLP matches to all employees that are eligible for elective deferral matches. Employers may not limit QSLP matches only to specific qualified education loan payments (such as loans for an employee's own education, for a particular degree program, or for attendance at a particular school) and may not exclude certain employees from QSLP matches (such as exclusions based on business unit, division, location, etc.) if they are eligible for elective deferral matches.
- Certification: Plans can rely on a certification by employees that their education loan payments satisfy the qualification requirements. 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, (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. Plans may require separate certifications for each

QSLP intended to qualify as a QSLP, or permit an annual certification that applies for all payments intended to qualify as QSLPs for the year. Plans are allowed to reasonably rely on an employee's certification that a payment qualifies as a QSLP without requiring additional verification. Alternatively, plans can provide for independent verification of the loan repayments (items (1) through (3) above), but the verification that the loan is qualified and incurred by the employee (items (4) and (5) above) can only be satisfied by employee certifications. Plans may also provide a passive certification process for verifying that the loan was paid by the employee by notifying the employee they have made this assumption, and giving the employee the opportunity to correct it. If a plan does establish an independent verification or passive certification process, the procedures must be reasonably available to all employees.

- Invalid Certifications: Under the interim guidance, if an employee's certification is later deemed to be incorrect, the employer match based on that certification does not have to be corrected, and such match will still be treated as a QSLP match.
- Administrative Procedures: A plan may establish reasonable administrative procedures to implement a QSLP match feature. The reasonableness of a procedure is based on all relevant facts and circumstances, such as whether QSLP matches are available to all eligible employees and whether the procedures promote compliance with QSLP match requirements. A plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines (including quarterly deadlines), provided the deadline is reasonable. Reasonableness factors include whether employees have a reasonable opportunity to collect and furnish claim submission documentation. The Notice provides that an annual deadline that is three months after the end of a plan year is a reasonable deadline.
- Nondiscrimination Testing: For plans that include a QSLP employer match, the plan may apply either a single ADP test for all employees or a separate ADP test for employees who receive QSLP matches. In addition, the Notice provides that separate testing can be performed either for employees who receive both QSLP and elective deferral matches, or for employees who receive *only* QSLP matches. This flexibility helps to ensure that certain ADP testing relief under the Code may be sought regardless of whether employees (including highly compensated employees and non-highly compensated employees) receive both QSLP matches and make elective deferrals.
- Safe Harbor Plans: A QSLP match feature may be added to a safe harbor plan as a mid-year change, assuming the relevant notice and election opportunity requirements are satisfied.
- Frequency of QSLP Matches: QSLP matches may be contributed on a different frequency than elective deferral matches. For example, a plan may provide for elective deferral matches to be contributed each payroll period while QSLP matches are contributed annually.

The guidance under Notice 2024-63 applies for plan years beginning on or after January 1, 2025. However, employers may rely on this guidance as a good faith, reasonable interpretation of SECURE 2.0 for plan years beginning before January 1, 2025. The IRS intends to propose regulations on QSLP

matches in the future and invites public comments on all issues covered by the Notice.