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Student Loan Benefits for Employees

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Total student loan debt in the country is estimated to be [over \\$1.7 trillion](#). These loans are often a great source of worry for employees and their families. Student loan repayments may be one of the largest regular expenses for many employees and command a large part of their take-home pay. And since mandatory federal student loan repayments restarted in [October 2023](#), employees may feel the pinch of student loans even more.

Given the impact of student loan debt on a large portion of the workforce, employers may find that tax-advantaged student loan programs are significant recruiting and retention tools. In this blog post, we cover two potential benefits that an employer may adopt: student loan assistance through Educational Assistance Programs (or EAPs), and the new qualified student loan matching provision in certain retirement plans.

Student Loan Assistance through EAPs

Although EAPs have been around for over 40 years, they have traditionally been limited to payment or reimbursement of qualifying education expenses, such as tuition, fees, books, and course supplies. This benefit has been advantageous for employees who attend school while working but not for employees who previously paid for school but do not pursue additional educational opportunities while working.

As part of the COVID relief, Congress passed the Coronavirus Aid, Relief, and Economic Security Act of 2020 (or CARES Act), which amended Section 127 of the Tax Code to expand EAPs to also include assistance in the form of student loan repayments. Congress extended the student loan EAP provision in the CARES Act such that it is now set to sunset on December 31, 2025. Many hope that Congress will extend this December 2025 deadline or make this provision permanent.

Employees can receive up to \$5,250 in total educational assistance (including student loan assistance and other education assistance) under an EAP. Employers can provide a smaller annual EAP benefit (such as \$1,000 or \$2,000, instead of the statutory \$5,250), and employers can design their EAPs to provide only student loan assistance or to also provide other educational assistance.

One of the benefits to employees is that the student loan assistance provided through the EAP is a tax-free fringe benefit, which means that the benefit is not treated as taxable income subject to withholding. This could provide a very meaningful benefit to an employee. To qualify as a nontaxable benefit, an EAP must satisfy a number of requirements under Code Section 127:

- There must be a written plan document for the program.
- The program may not favor highly compensated employees or provide more than 5% of its benefits during the year to certain shareholders or owners (or spouses or dependents).
- The program may not allow employees to choose to receive cash or other benefits in lieu of educational assistance.
- The employer must provide reasonable notice of the program to eligible employees.

While traditional EAPs are often administered in-house, there are third party administrators that can assist with the administration of an EAP that provides student loan assistance.

Student Loan Matching

The [SECURE 2.0 Act of 2022](#) contains a new provision that permits 401(k) plans, 403(b) plans and 457(b) plans to provide matching contributions for qualified student loan payments. If this feature is added, employees who prioritize student loan payments over retirement plan contributions may not lose out on employer matching contributions that would otherwise be available to them. This provision is an optional plan provision and may be effective for contributions made for plan years beginning after December 31, 2023.

This new student loan matching provision is built on an earlier private letter ruling (PLR) issued by the IRS that approved a nonelective contribution for any participant who made student loan payments of at least 2% of the participant's compensation (in lieu of any employer match on 401(k) contributions that would otherwise be available). The PLR also concluded that the match did not violate the contingent benefit rule, which prohibits a benefit (other than matching contributions) to be conditioned on an employee's contributing or not contributing to a retirement plan. Although the student loan PLR approved an arrangement for matching contributions based on student loan payments, the impact was limited because a PLR can only be relied on by the party that requested it and there remained a lot of questions about how student loan matching could apply in other arrangements.

The SECURE 2.0 provision expands the availability of student loan matching to address some plan sponsor concerns. Under SECURE 2.0, matching is only available for student loans for qualified higher education expenses incurred by the employee. Student loan matching must be available to all employees eligible to receive the employer match (and only those employees), and the match must be made at the same rate and vest "in the same manner" as matching contributions on account of employee retirement plan contributions. Of note, the new SECURE 2.0 provision states that matching contributions based on student loan payments may be separated for ADP testing purposes, and plan sponsors can rely on an employee's annual self-certification that student loan payments have been made.

The IRS and Treasury have not yet released any guidance regarding the SECURE 2.0 student loan matching provision. SECURE 2.0 directs the IRS and Treasury to issue guidance that would allow student loan matching to be done at a different frequency than matching contributions based on employee retirement plan contributions so, for example, student loan matching may be done on an annual basis even if employee retirement plan contributions are matched on a payroll basis. Guidance will also address reasonable procedures for claiming matching contributions on behalf of student loan payments, under which eligible employees may claim student loan matching contributions at least 3 months after the end of the year. As noted above, SECURE 2.0 addresses that self-certification can be used to verify that student loan payments have been made, but guidance would

need to address whether self-certification could be relied upon that the payments are for student loans that meet SECURE 2.0's requirements for matching.

Plan sponsors that want to adopt this optional provision will need to amend their plan by the amendment deadline for SECURE 2.0 provisions, which has been extended to December 31, 2026 (for non-governmental plans). Model amendments implementing the SECURE 2.0 student loan matching provisions are expected to be issued before the amendment deadline.

Employer Considerations

To summarize, we have provided some of the key benefits and disadvantages to providing student loan assistance through EAPs and student loan matching contributions through a retirement plan:

	<u>Benefits</u>	<u>Disadvantages</u>
Student Loan Assistance through an EAP	• Most direct way to provide a tax-advantageous benefit to employees with student loans • Retention and recruitment tool for younger employees	• Represents a substantial cash expense for employers, and employers may need more cash on hand to pay for reimbursements • Provision to sunset in 2025
Student Loan Matching Contribution	• Ensure employees do not lose employer matching contributions when they pay student loans instead of making 401(k) contributions • Help employees to continue to save for retirement even if they are unable to contribute to the retirement plan • Retention and recruitment tool for younger employees	• New provision, lack of guidance available • May incentivize younger employees to save less for retirement • Not many commercial offerings to administer this provision yet

Employers should evaluate their employee population when deciding whether to allow student loan assistance through EAPs or student loan matching contributions. For example, these benefits will be more valuable to a workforce filled with employees with college or advanced degrees.