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Working for America's Retirement

October 18, 2024

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-63)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

**SUBMITTED VIA REGULATIONS.GOV**

RE: 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

The American Retirement Association (ARA) is writing in response to the request for comments in Internal Revenue Service Notice 2024-63 (the "Notice"), which provides guidance on matching contributions made on account of Qualified Student Loan Payments (QSLPs) under Section 110 of the SECURE 2.0 Act of 2022 ("SECURE 2.0"). ARA thanks the Internal Revenue Service (IRS or the "Service") for the opportunity to provide input on these matters.

The ARA is a national organization of more than 35,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

## Summary

ARA recommends that IRS issue guidance related to qualified student loan payments (QSLPs) as follows (listed in order of relative priority):

1. Provide that a plan may calculate matching contributions on a payroll period basis even if QSLPs are not required to be paid through payroll deduction.
2. Confirm that a plan may match QSLPs throughout the year without violating rules that prohibit the pre-funding of matching contributions.
3. Confirm it is permissible for a plan to require participants to pay reasonable expenses of the QSLP matching program.
4. Clarify when a participant is unable to transfer loan data to an employer-selected third party service provider and therefore cannot be required to utilize such data transfer service in order to receive QSLP matching contributions under the plan.

## Discussion of Recommendations

There are several outstanding questions regarding the implementation of various provisions in Section 110. Providing guidance on these items so as to permit flexibility in program structure will remove barriers to adoption of QSLP programs and allow employers to help their employees save for retirement while meeting student loan obligations.

## Rate of Match

Section 401(m)(13)(A)(i) requires the plan to provide a match on QSLPs at the same rate as elective deferrals. Plans commonly calculate a match on elective deferrals based on deferrals made and compensation received each payroll period (rather than on an annual basis). If the plan requires that QSLPs be paid through payroll deduction, then it appears the plan could easily apply the payroll period calculation to the match on QSLPs.

However, ARA anticipates that not many plan sponsors will require the use of payroll deduction QSLPs due to the negative impact to participants that would result (such as the loss of the reduced interest rate that many lenders give for using automatic ACH repayment). When payroll deduction is not used, repayments of a student loan generally are not made on the same frequency as elective deferrals. For instance, elective deferrals are typically made in a weekly, bi-weekly, or semi-monthly payroll whereas student loan repayments are typically due on a monthly or quarterly basis. This difference in frequency creates uncertainty about whether a plan can have a payroll period match for elective deferrals and offer a QSLP matching contribution. ***ARA recommends*** the Service provide that a difference in the period over which a match on deferrals is calculated and the period over which a match on QSLPs is calculated does *not* create a different rate of match. For example, the plan should be allowed to calculate a match on elective deferrals based on the compensation and deferrals each pay period while calculating the match on QSLPs based on compensation and repayments made each month. ARA believes this is reasonable because regardless of whether an employee who is eligible during a payroll period decides to defer that period, the employee has the *right* to defer and receive the match. Regardless of whether it's made on a monthly, quarterly, or plan year basis, the available match is the same, it is just calculated on a quarterly or plan year basis. Thus, the *rate* of match for both the deferrals and the QSLPs is the same; it is only that the *amount* of match may differ because of differences in deferral/payment patterns. ARA members have reported that plan sponsors that currently use a pay period match are reluctant to adopt QSLP match programs due to the additional administrative burden and cost of moving to an annual match. Therefore, ARA believes providing this clarification will promote further adoption of QSLP match programs and reduce overall administrative costs.

Alternatively, ***ARA recommends*** the IRS clarify that, for a plan that determines a match on a basis other than the plan year, use of any of the following calculation methods for the QSLP match will not cause the plan to be treated as providing a different rate of matching contributions between elective deferrals and QSLPs:

- Calculate the match on QSLPs by treating the entire QSLP as an elective deferral made during the applicable calculation period in which the QSLP is made;
- Calculate the match on QSLPs as though the QSLP was an elective deferral that was made pro-rata in the applicable calculation period to which the QSLP relates (e.g., a monthly QSLP payment is treated as an elective deferral made equally over the two payroll periods occurring during that month); and
- Calculate the match on QSLPs annually, even though the match on elective deferrals is calculated on a more frequent basis.

ARA believes that all three methods are reasonable approaches to comply with the intent of IRC §401(m)(13)(A)(i) and that providing the plan sponsor with flexibility to choose any of these methods will maximize the likelihood that the employer's payroll provider and recordkeeper can implement the QSLP provision.

## Funding of the Match

Section 110(g)(1) of SECURE 2.0 directs Treasury to prescribe regulations allowing the frequency of making the matching contributions on QSLPs to differ from the frequency of other matching contributions under the plan, as long as they are made at least annually. Section 401(m)(13)(B)(iv) permits a QSLP to be included in a plan that meets the requirements of a safe harbor plan that utilizes matching contributions. If the safe harbor plan uses a match based on the payroll period, then such match must be deposited quarterly. The match on QSLPs may not be able to be calculated on a quarterly basis, however. Depending on the plan's procedures to claim the QSLP match, the QSLP match might be determinable on only an annual basis. Thus, to effect the intent of IRC §401(m)(13)(B)(iv), ***ARA recommends*** IRS issue guidance permitting employers to deposit QSLP matches annually (even if the plan otherwise provides for a payroll-period match on elective deferrals that is required to be deposited more frequently).

In addition, some employers may wish to deposit the match at normal intervals (e.g., payroll or quarterly)—both to manage cash flows and to benefit employees. When using QSLPs, these employers may desire to make the QSLP match based on employee information that is collected during the year, but certified at a later date through passive certification. It is not clear under current guidance whether funding the match based on this information would be impermissible pre-funding of the match. Similarly, the statute provides that an employee's elective deferrals are matched before any QSLPs. However, the employee might make QSLPs before the employee makes elective deferrals (for instance, an employee could make QSLPs from Jan through June, pay off the student loan, and then begin making elective deferrals). It is unclear whether funding the matching contribution based on the QSLP payments during the year would be impermissible if it turns out those amounts are not actually matched because the match technically is due on the employee's elective deferrals that are made after the match is deposited. In both cases, the employer has a reasonable basis for depositing a matching contribution during the year as a reasonable estimate (much in the same way contributions for individuals with earned income may be made during the year and then confirmed after year end). Permitting contributions based on a reasonable estimate of the QSLPs for the employee will benefit both the employer and the employee. Therefore, ***ARA recommends*** IRS issue guidance clarifying that funding the match based on QSLPs made during the year or based on information collected prior to completion of the certification process does not violate the applicable Code requirements.

## Reasonable Expenses of the QSLP Matching Program.

QSLP matching programs will almost certainly have an associated cost to implement and administer (in addition to the benefit expense of the additional match). This additional cost, as long as it is reasonable, will be a proper expense of the plan and may be paid from plan assets. ARA members have inquired whether §401(m)(13) restricts the manner in which these expenses may be allocated to participants. In particular, whether §401(m)(13) prohibits the plan from charging the reasonable expense of the QSLP program only to those participants who utilize the program. ***ARA recommends*** the Service clarify that plan administrators may allocate the administrative expense of a QSLP program in any reasonable manner, which may include the allocation of expenses only to those participants who enroll in the QSLP program. ARA believes this is reasonable and equitable because all participants have the ability to make elective deferrals, but not all participants will have the opportunity to make QSLPs (because, for instance, they may not have student loans) and sharing costs only among those benefiting from a plan feature is reasonable. This is consistent with other optional features that a plan may offer, such as distributions, QDROs, and loans, which charge fees only to participants that utilize the feature.

## Inability to Transfer Loan Data

A plan administrator's procedures for claiming a QSLP match must be reasonable. Q&A C-3 of the Notice provides:

> "[A] plan may require independent verification of a payment based on the transfer of loan data to the plan's third-party service provider only if the plan permits an employee who does not have the ability to transfer loan data to a plan's third-party service provider to verify the employee's qualified education loan payment by other reasonable means . . . ."

ARA members have questioned when an employee doesn't have the ability to transfer loan data. In particular, guidance clarifying that this determination is based on objective criteria and not on a participant's personal willingness to transfer data would be helpful. For example, if two employees have a loan with the same lender, and the lender is willing to transfer data to the plan's service provider for purposes of obtaining independent verification of the employees' QSLPs, then the plan should be allowed to require both employees to utilize the data transfer service. If either employee objects to the transfer of data, the employer should not be required to provide alternative procedures. This is similar to the Service's position in the Notice that an employee can be required to pay the QSLP through payroll; an employee's unwillingness to utilize the payroll repayment process does not mean the procedure is unreasonable or unavailable to the employee. ARA believes that requiring the plan administrator to take into account personal preferences will increase the burden of administering QSLP programs, increase costs, and reduce adoption. Therefore, ***ARA recommends*** that final guidance clarify the determination of whether an employee is able to transfer loan data is based on objective criteria and not on the employee's personal willingness to transfer data.

## Conclusion

ARA believes the recommended guidance will assist plan sponsors and their service providers in moving forward with adoption of QSLP matching programs, promote compliance with the tax code, and improve economic efficiency by reducing the complexity and burdens of the employer.

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These comments are submitted on behalf of ARA. If you have any questions regarding the matters discussed herein, please contact Kelsey N.H. Mayo, Director of Regulatory Policy, at kmayo@usaretirement.org or 704-342-5307. Thank you for your time and consideration.

Sincerely,

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