

# Student Loan Payments Need Not Derail Retirement Savings

Victoria E. Anderson

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The IRS recently released interim guidance to assist employers who wish to provide matching contributions to the 401(k) or 403(b) plan accounts of employees on their qualified student loan payments (“QSLPs”), in the same way that they normally match employee elective deferrals. Per the interim guidance, which has been issued in connection with Section 110 of the SECURE 2.0 Act, employers that are interested in offering this QSLP matching feature should keep in mind the following rules and restrictions when implementing the match:

- A QSLP is a payment made by an employee in repayment of a qualified education loan incurred by the employee to pay qualified higher education expenses (which may include tuition, fees, books, supplies, transportation, or room and board). This payment can be made on behalf of the employee’s spouse or dependent. However, for a qualified loan to be treated as “incurred by the employee,” the employee must have a legal obligation to make the payment under the terms of the loan (e.g., as a cosigner or, if the primary borrower defaults, as a guarantor).
- For purposes of the match, both QSLPs and elective deferrals are subject to the Code Section 402(g) annual limit (\$23,000 for 2024), which means that QSLPs made during a plan year can only be matched to the extent that they do not exceed the annual limit minus any elective deferrals made by the employee during the same plan year.
- If a plan offers QSLP matches, they must be made available to all employees who are eligible for elective deferral matches. Employees may not be excluded from QSLP matches based on their employing entity, business unit, division, location, or other similar basis (although collectively bargained employees may be excluded). Furthermore, the employer may not limit QSLP matches to only certain qualified education loans, such as for a particular degree program or school, and may not exclude loan repayments on behalf of spouses or dependents from the match.
- To receive the match, employees must certify that the loan payment satisfies the requirements to be a QSLP by providing the following information to the plan (or to a third-party service provider acting on behalf of the plan):
  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.

- Any of the items above may be satisfied through affirmative certification by the employee (which for items 4 and 5 can be through loan registration, whereby an employee provides the information to the plan before the first loan payment). Alternatively, the first three items may be satisfied through independent verification by the employer or passive certification by the employee. Independent verification means that the plan must be able to validate the accuracy of the items (for example, the first three items are independently verified if an employer allows an employee to make qualified education loan payments through payroll deduction). Passive certification means that items 1 and 2 are provided from the lender to the plan, the plan notifies the employee of the information (including a statement that the employer assumes that item 3 has been satisfied), and the employee is given a reasonable period to correct the information included in the employee notice. If the employee does not correct the information within the reasonable period, they are treated as certifying the information.
- QSLP matches can be contributed at a different frequency than elective deferral matches, as long as they are made at least annually.
- A plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines, provided that each deadline is reasonable, as determined by all relevant facts and circumstances, including whether employees have a reasonable opportunity to collect and furnish claim submission documentation.
- The interim guidance permits multiple ways for a plan to pass nondiscrimination testing, in order to ensure that the plan is not penalized if employees who make both QSLPs and elective deferrals include different proportions of HCEs and NHCEs, or if the HCEs and NHCEs have different deferral percentages. A plan may either apply a single ADP test for all employees or apply a separate test for employees who receive QSLP matches. If applying a separate test, the elective deferrals of employees who make both QSLPs and elective deferrals can either be taken into account in performing the separate test and excluded from the main test, or vice versa.

Employers that provide matching contributions on elective deferrals may want to consider whether they would like to implement the QSLP matching feature, which determination would likely depend on the composition of its workforce and current rate of employee deferral participation in the retirement plan. If so, they must discuss how to administer the feature with their third-party administrators. They will also need to amend the plan for the new feature.