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401(K) PLANS

Excuse Me But Your QSLP Is Showing

On August 19, 2024 the IRS issued Notice 2024-63, giving guidance to SECURE 2.0, Section 110, which provides language allowing for employer matching within 401(k), 403(b), Governmental 457, and SIMPLE IRA plans in relation to Qualified Student Loan Payments by employees.

BY MICHELLE MURPHY

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Imagine it was your job to employ doctors and lawyers and accountants and such, but they come fresh out of college with enormous debt to pay.

As a result, even with the hefty compensation you pay to a person coming out of college with a professional degree, the loan repayments are a considerable burden for college graduates. How much more so for those who graduate with jobs with notoriously lower pay, such as social workers and teachers, yet are frequently required to have master's degrees to obtain managerial or supervisory positions? If only there were a way for a benevolent employer to assist with the burden, yet help their employees continue to save for the future!

Mammas Don't Let Your Babies Grow Up to Be Cowboys

Abbott Laboratories tested the waters with their 401(k) plan design implementing a matching

provision to their plan wherein the plan match was calculated in proportion to participant student loan payments, even though the plan also permitted the participants to defer income to the 401(k) plan. Private Letter Ruling (PLR) 201833012 was issued on May 22, 2018, and allowed that Abbott's plan design was legal and did not violate the contingent benefit rule which prohibits an employer to add additional restrictions upon the employee in order to participate in making employee deferrals.

Abbott Labs' PLR opened the door for employers to provide additional benefits particularly to young new hires by helping them save for retirement, even if the burden of repaying student loans meant that the employees could not afford to make salary deferrals. However, PLRs are indeed private and only can be relied on by the entity that requested the ruling. SECURE 2.0 of 2022, Section 110, added a statute that permits employers to match within their 401(k), 403(b), governmental 457, or SIMPLE IRA, an employees' Qualified Student Loan Payments (QSLP) made to a qualified education loan (QEL), thus making an Abbott-style provision available to other employers.

With more than half of graduating college students incurring debt, employers willing to contribute to employee retirement plans to help such indebted employees receive employer contributions and build toward retirement could be a welcomed benefit. The average debt at graduation is upwards of \$28,000, twice that in some states, close to three times that for masters' degrees and more like \$124,000 for doctorates. The monthly payments can be crippling for young employees starting their careers; it is not uncommon that student loan payments are larger than a new car payment.

Define QSLIP: What the QEL!

A qualified student loan payment (QSLP) is a payment made during the plan year by an employee on a loan that was incurred to pay qualified education expenses. To be a QEL, the loan must have been incurred on behalf of the employee, the employee's spouse, or the employee's dependent. "Incurred" may mean the employee was either the borrower or the co-signer, that is, that they are legally responsible for the loan's payments. A guarantor, on the other hand, is only secondarily liable for loan payments, so the loan payments count as QSLPs only if the loan was defaulted upon by the primary borrower. The expenses must have been paid or incurred within a reasonable period of time after the loan was taken and must be

attributable to expenses incurred while a student, as defined in Internal Revenue Code (Code) Section 221. Bona fide expenses under Section 221 include tuition, fees, books and supplies, room and board, as reduced by scholarships and allowances. A QEL will not include any personal loans provided by a relative to the student or loans taken from a retirement plan.

QSLPs that are matched are limited to the annual Code Section 402(g) deferral limit, reduced by employee deferrals contributed.

Don't Let 'Em Pick Guitars or Drive Them Old Trucks

So, what about those students who rack up tens of thousands of dollars in debt and are still living at home? In fact, Mom cosigned every loan and is equally responsible for payment as the student (even though the understanding of Mom and Child was that the student would be the one to make the payments). If that guitar-picking student is still considered a dependent of Momma and she's paying those loan payments, Momma may qualify for a QSLP in her employer plan. A dependent would include a child who has the same principal place of residence for more than half of the year, is a student under the age of twenty-four, who doesn't pay for over half of their own financial support and is not filing a joint tax return with a spouse. Under these circumstances, Momma as the parent has a relationship with the dependent that would allow her to meet the QSLP definition if she is paying her dependent's qualified educational loan payments, and her employer plan is providing a match. Payments by the student rather than Momma are not eligible for matching. The participant must be the one who actually makes the payments.

Matching Requirements and Limitations

QSLP matches must be made available to all employees eligible to receive match upon elective salary deferral contributions, with no excluded classes other than employees under a collectively bargained agreement or qualified separate line of business (QSLOB). Matches must be made on QSLPs at the same rate and subject to the same requirements as are salary deferrals, as well as the same vesting schedule for the regular employer match in the plan. A plan may not have matching provisions only for employees with student loan payments.

The QSLP match may only be made in relation to loan payments made during the plan year, but if provision is made within the plan document, may

be claimed by a certain date in the following year. Allowing this type of procedure may assist in the documentation requirements and processing. The deadline established for reporting of the QSLP payments may need to accommodate the need for ADP/ACP testing and timely correction for non-Safe Harbor plans.

QSLP match deposits may be made at a different frequency than regular match within the plan, for example, QSLP matches could be made annually, while deferral matches are made each payroll, but the QSLP match must be made no less frequently than annually.

Additionally, the plan sponsor is not permitted to limit the match on QSLP for arbitrary reasons, for example, matching only loans for education at particular schools, or for particular degrees, or for the employee's own education. The plan sponsor also may not limit the matching by location, business group, division, location, or other similar group (QSLOB is an exception).

It is important to note that, once the match on the QSLPs is deposited to the plan, it is indistinguishable from a regular match on deferrals. It is deposited to the matching contribution source, counts in the actual contribution percentage (ACP) test, and is subject to the same vesting schedule as other matching contributions.

QSLP Employee Certification

Responsibility for certification of the loan payments being QSLPs falls upon the employee availing themselves of the benefit. The plan may require certification with each payment or may permit an annual certification. Certification must include the amount of the loan payment, the date payment was made, that the employee made the payment, that the loan paid was a QEL and used to pay higher education expenses, and that the loan was incurred by employee, employee spouse or dependent, or a combination. These certifications may come from multiple resources, such as employee self-certification, payroll deduction automation, loan payment receipt verification, or third parties that provide assistance with this verification process.

Required ADP Testing

For plans that are not safe harbor, an actual deferral percentage (ADP) test must generally be done

including all employees (including those who receive QSLPs). However, the Internal Revenue Service (IRS) recognized that the availability of matching contributions on loan payments may act as a disincentive to such employees making deferrals. Therefore, a plan sponsor may elect to use one of two special ADP testing methods: (1) the ADP testing may be performed in two tests, one including all employees who receive QSLPs and one including only employees without QSLPs; or (2) one ADP test may be performed including the QSLP employee deferrals with the general testing population, with a second ADP test including only all QSLP employees (although excluding from this test any employee deferrals made by the QSLP employees).

A QSLP is not an employee deferral and is, therefore, not part of the ADP test itself. It is also not counted as an annual addition for Section 415 limits. It is, however, counted as if it were a deferral for purposes of the match calculations including safe harbor match.

It is also permissible to add a QSLP provision to a safe harbor plan mid-year.

A New Song for the Road!

So, employers, there are ways to alleviate some of the pain and worry that your employees with student loans may be feeling about their anemic retirement plan savings by adding provisions to match qualified student loan repayments. The new guidance is effective for plan years after December 31, 2024, but amendments are not required until December 31, 2026, with the expectation that the IRS will provide a model amendment sometime in the interim.

Recordkeepers may not be quite ready to account for the QSLP match in their systems, nor your compliance software ready to track and calculate the match on loan payments. However, it is coming quickly, and if employers are ready to help employees this way, it is worth finding out where there are providers prepared to pick up these new provisions.

And for those Mommas out there worried about their babies driving big trucks instead of becoming lawyers, our firm handles quite a few nice 401(k) plans for drivers of really big trucks. Let those cowboys be.

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