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Working for America's Retirement

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Internal Revenue Service
Attn: CC:PA:01:PR (REG-104194-23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

SUBMITTED VIA EMAIL

RE: Implementation of Section 110 of SECURE 2.0

The American Retirement Association ("ARA") is writing to offer comments on the guidance needed to implement Section 110 of the SECURE 2.0 Act of 2022 ("SECURE 2.0") regarding the treatment of student loan payments as elective deferrals for purposes of matching contributions.

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 members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has over 35,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

Summary

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

1. Permit a plan to set a deadline for claims that is earlier than three months after the end of the plan year when the plan requires claims to be made on a periodic basis that is more often than annually and clarify that certain other practices would be reasonable procedures.
2. Confirm that certain operational practices will not cause a plan to have a different rate of match for QSLPs than for elective deferrals.
3. Clarify how nondiscrimination testing must be conducted by announcing an ordering rule that treats contributions first as a match on elective deferrals and then as a match on QSLPs and specifying how the disaggregation of employees receiving the QSLP match will apply in certain situations.
4. Specify the content that is required to be in the participant certification, confirm that independent documentation may be requested, and clarify that an employer may (but is not required to) forfeit matching contributions made on QSLPs if the employer determines the certification was incorrect.
5. Permit the match on QSLPs to be made annually, even if the plan's match on elective deferrals must be deposited more frequently, and permit plans to fund matches based on information collected before certification.
6. Permit employers to match only a designated class of QSLPs.
7. Update the Employee Plans website to provide information on existing guidance related to key definitions relevant to QSLPs.

8. Provide a model amendment for QSLP programs to reduce implementation costs and facilitate adoption.

While each piece of guidance will assist employers in adopting QSLP programs, ARA recommends the IRS prioritize the guidance related to reasonable claim procedures, rate of match, nondiscrimination testing, and employee certifications because these items are essential for immediate adoption of QSLP programs.

Background

Section 110 of SECURE 2.0 permits 401(k), 403(b), governmental 457(b), and SIMPLE IRA plans to treat a QSLP as an elective deferral for purposes of calculating matching contributions under the plan. In order for a contribution based on a student loan repayment to be treated as a QSLP, the employer must ensure that a number of requirements are met, including:

- Obtaining information on the student loan repayments made by an employee;
- Ensuring the payments meet the definition of a QSLP, including:
    - Coordinating the payments with the employee's elective deferrals and applicable limits under IRC §§402(g) and 415(c)(3); and
    - Obtaining the supporting documentation or certification from the employee;
- Calculating the matching contribution, using the same rate of match as the plan uses for elective deferrals;
- Contributing the matching contributions to the plan; and
- Performing applicable nondiscrimination testing for the plan.

These administrative steps are not insignificant. However, ARA believes that Treasury can issue guidance that will allow employers important flexibility in how they meet these requirements without compromising the goals of accuracy and compliance, and such flexibility is essential to promote adoption of QSLP programs. ARA believes that employers would be most likely to design QSLP programs in one or a combination of the following ways:

1. Post-Certification Only. Under the simplest QSLP program design, the plan may establish a periodic deadline for employees to submit evidence of QSLPs and then calculate the applicable match. While seemingly simple in operation, this design limits the ability of the employer to calculate and fund QSLP matching contributions on an ongoing basis, which may negatively impact both the employer and the participant and may create other administrative challenges related to funding and testing.

2. Advanced Election with Post-Certification. Employers who value more steady cash flow and funding may wish to have employees "elect" to have student loan repayments matched in the same manner that they elect to make deferrals to the plan. In this design, the employee would inform the employer of the student loan payments he or she will make in advance of the period (just as they are required to elect to make salary deferrals in advance) and the employer will then calculate matching contributions based on this election. The employer will obtain the required certification or documentation by an established claims deadline and then make any required adjustments to the matching contributions for the period. This solution is appealing because it permits an employer to utilize its existing election systems and payroll feeds and to manage its cash flows and liabilities on an ongoing basis.

3. Advanced Certification with Ongoing Documentation. Employers may also wish to employ a system that uses independent verification of loan payments. Under this method, the employer would have an employee who wishes to participate in the QSLP program certify that he or she has an eligible student and enroll in a service that monitors the employee's student loan account. The service would

determine payments that are made on the eligible loan and transmit such information to the employer (or third party administrator) for purposes of calculating the associated matching contribution. Because the amounts will be verified by a third party, the employer would not need to obtain a certification from the employee after the fact nor would a true up calculation be necessary because the amounts are known and certain.

ARA believes that all three approaches (or combination of approaches) should be permissible ways to implement a QSLP program and that providing flexibility to design the QSLP program in a way that meets the employer's administrative needs and business objectives will promote adoption of these programs. Thus, ARA recommends that any guidance issued by Treasury be developed in light of, and with the intent to permit, these reasonable QSLP program structures.

Discussion of Recommendations

There are several outstanding questions regarding the technical meanings 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.

1. Reasonable Procedures for Claims

Section 110(g)(2) of SECURE 2.0 directs Treasury to prescribe regulations allowing employers to impose reasonable procedures for participants to claim matching contributions on QSLPs, including an annual deadline to make a claim that is not earlier than three months after the close of each plan year. ARA believes guidance on these reasonable procedures is critical to the adoption of QSLP programs.

i. Deadline for Claims

The reference to an annual deadline that is at least three months after the end of the plan year has created significant questions and hesitancy in adoption of QSLP matching programs. It is unclear whether this provision requires all plans to give employees until three months after the end of the plan year to claim a match on QSLPs or whether a plan that requires claims to be submitted more frequently than annually may establish a final deadline for claims that is earlier than three months after the end of the plan year. ARA recommends that IRS clarify that a reasonable claim procedure may establish a claim deadline that is more frequent than annually and a plan that uses a more frequent claim deadline may establish a final deadline for claiming the QSLP match that is earlier than three months after the end of the plan year.

This interpretation is reasonable because the construction of the provision indicates that setting an annual deadline that is at least three months after the end of the plan year is an example of a reasonable claim procedure. Nothing in the provision indicates that it is the only reasonable claim procedure. Thus, Treasury has authority to announce other reasonable procedures.

Further, an interpretation permitting more frequent claim deadlines is necessary for efficient tax administration. If a plan is required to give employees until three months after the end of the plan year to claim QSLP matching contributions, then plans that are required to perform ADP or ACP testing will not be able to accurately conduct testing during the two and a half (2 ½) month period after the close of the plan year—requiring the employer to choose between excise taxes on refunds to highly-compensated employees or increased employer contributions to correct the testing failure. In addition, such a deadline would interfere with the regular process of filing the employer's tax return because the company will not be able to determine its matching contributions (and corresponding deductions) before the March 15 tax-filing deadline (and potentially not by the April 15 tax-filing deadline for pass-through entities). Furthermore, requiring employers to use an annual deadline could put financial strain on an employer. Many companies fund matching contributions throughout the year for cash management purposes. Requiring employers to allow employees to submit claims for QSLPs on an annual basis (rather than more frequently) will significantly impair the company's ability to monitor and manage its liabilities and chill adoption of QSLP programs.

Thus, ARA recommends the IRS issue guidance confirming that a plan may require claims on a periodic basis during the plan year (rather than only annually), and that if a plan has a claim deadline that is more frequent than annually then the last claim deadline for the year may be earlier than three months after the close of such plan year.

ii. Requirement to Opt-In

As noted above, some employers may wish to leverage the election process in their existing payroll and recordkeeping systems by having employees elect, in advance, to have a certain amount of QSLPs matched for a period. Making such an election would be part of the plan's procedures for making a claim for QSLP matching contributions. ARA believes such an approach is a reasonable procedure because it is consistent with the intent of the QSLP program to treat student loan repayments in the same manner as elective deferrals. Therefore, ARA recommends that IRS guidance confirm that a plan administrator's reasonable procedures may include a requirement to opt into the QSLP program by the deadline established by the administrator (which may be in advance of the QSLP payment).

iii. Use of Third-Party Monitoring

A significant impediment to QSLP program adoption is the administrative burden of acquiring information related to QSLPs. One way that employers believe they can meet these burdens is to employ the services of a third-party who will monitor student loan payments through electronic account access granted by the employee. These services ease the burden of complying with QSLP requirements and increase the accuracy and certainty of QSLP matching contributions. ARA recommends that IRS guidance confirm that a plan administrator's reasonable procedures may require the employee to use a certain third-party service in order to claim the match and pay any fee associated with the service.

2. 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). Repayments of a student loan generally are not made on the same frequency as elective deferrals, however. 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 how a plan with a payroll period match can ensure the QSLPs are matched at the same rate as elective deferrals. 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.

3. Treatment of Participants in Testing

IRC §401(m)(13)(B)(iv) allows a plan to determine compliance with ADP testing separately for those participants who receive a matching contribution based on QSLPs. ARA members have raised several questions regarding how to apply this provision. To clarify the ADP testing requirements for plans with a QSLP program, ARA recommends the IRS issue the following guidance:

- An ordering rule establishing that any matching contribution is to be first treated as a match on elective deferrals and then as a match on QSLPs.
- If a participant receives matching contributions on both elective deferrals and QSLPs during a year, then all such participant's contributions are included in the portion of the plan that may be disaggregated for employees who received matching contributions on a QSLP.
- That a plan may utilize IRC §401(m)(13)(B)(iv) disaggregation and IRC §410(b)(4)(B) disaggregation, in which case the plan would perform four ADP tests.

Certainty regarding how to perform nondiscrimination testing is critical to compliance with the tax code and, therefore, guidance on this issue is critical for adoption of QSLP programs by employers who maintain non-safe harbor plans.

4. Employee Certification

Section 110 of SECURE 2.0 permits the employer to rely on an employee's certification that he or she has made a payment on a qualified education loan incurred by the employee to pay qualified higher education expenses.

i. Content

The statute does not specify what information must be attested to in the employee's certification. ARA recommends the IRS issue guidance that the employee's certification should include an attestation regarding the following six elements:

- The amount of the repayment;
- The date of the repayment;
- A statement that the repayment was made by the employee;
- A statement that the loan being repaid is a qualified education loan;
- A statement that such loan was incurred by the employee; and
- A statement that the loan was used to pay qualified higher education expenses.

The certification should not be required to state all the underlying facts that support a determination that the loan is a qualified education loan, that it was incurred by the employee, or that it was used to pay qualified higher education expenses. For example, the employee may attest that the loan was incurred by the employee and need not provide underlying detail such as whether the employee was the primary borrower, cosigner, etc.

ii. Independent Documentation

ARA also recommends the IRS clarify that plans are permitted to require an employee provide documentation related to QSLPs and such independent evidence will be treated as a certification of the element it supports. Many employers do not want to rely exclusively upon employee certifications in matters related to retirement plan administration. Instead, the employer wishes to require reasonable third-party evidence. In the context of QSLPs, for example, plan sponsors are commonly evaluating third-party services that will review detailed information regarding student loans and monitor payments on employees' student loans as they are made during the year. This independent verification of QSLPs gives employers more confidence in adopting the QSLP program and the accuracy of their contributions to the plan based on QSLPs. In instances where the employer obtains independent verification of a relevant element, a separate certification of that information seems an unnecessary and duplicative administrative process that will add burdens without increasing accuracy or tax efficiency. Thus, ARA recommends that the IRS issue guidance clarifying that an employer may require an employee to provide documentation relevant to the existence of a QSLP and such documentation will be considered certification by the employee to the extent such document confirms information to which the employee is required to certify (as discussed above).

Such a rule would permit efficient administration of QSLP programs. For example, this would permit the employer to have the employee certify upon enrollment in the QSLP program (and then at the beginning of each year thereafter) that a particular loan was a qualified education loan, incurred by the employee, and used to pay higher education expenses. And then a third party monitoring service could obtain independent verification of payments made against such loan (including the date, amount, and source of payments) and provide such information to the employer so that it can account for and even contribute the QSLP matching contributions to the plan on a regular basis during the plan year. This process would benefit all stakeholders because (a) employer contributions would be more accurate because they are based on independent information, (b) the employer would be able to manage its liabilities and cashflows more effectively, and (c) the participant would be able to receive matching contributions at an earlier date with fewer administrative burdens.

iii. Incorrect Certifications

The statute does not address what the employee's and employer's options or obligations are if an employee's certification regarding a QSLP is incorrect. For example, it is not uncommon for a student loan payment to be returned in whole or in part. In this case, the certification may have been correct at the time it was made, but later information may show the QSLP was not actually made. ARA recommends the IRS issue guidance clarifying that the plan may, but is not obligated to, require employees to update certifications if the employee determines the certification was incorrect, and if the plan administrator becomes aware that an employee's certification was incorrect, then the plan administrator is permitted to forfeit any associated matching contribution from the participant's account. This treatment is reasonable and consistent with how the match is handled when an elective deferral is returned to a participant due to an ADP testing refund or other reversal of the deferral.

5. Timing of Matching Contribution

Section 110(g)(1) of SECURE 2.0 directs Treasury to prescribe regulations allowing the frequency of making the matching contributions on qualified student loan payments 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 the 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 deposited more frequently).

In addition, some employers may wish to deposit their match at normal intervals (e.g., payroll or quarterly)—both to manage cash flows and to benefit participants. When using QSLPs, these employers may desire to make the QSLP match based on employee information that is collected, but then certified at a later date. For example, when using a third party service, the employer may have information regarding the date and amount of a student loan payment as the payments are made and then ask the employee to certify that all such payments were made by the employee no later than three months after the end of the plan year. As another example, the employer may have the employee elect in advance the amount of QSLPs that the employee will be making and then have the employee certify such amounts were in fact made. 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 the IRS issue guidance clarifying that funding the match based on information collected prior to the formal certification does not violate the applicable Code requirements.

6. Limits on Loan Repayments Recognized

IRC §401(m)(13) provides several requirements a plan must meet for an employer contribution on account of a QSLP to be treated as a match under the plan. It is not clear whether IRC §401(m)(13) requires the plan to recognize all QSLPs or whether the plan may elect to make contributions on behalf of only a determinable class of QSLPs. For example, it is common for employers to provide student loan benefits only for qualified education loans incurred for the employee's education (rather than for the education of a spouse or dependent). Some ARA members have also expressed a desire to make contributions only for repayments made through payroll deduction, repayments made after the employee completes an election regarding QSLPs, or repayments to an account monitored by a third-party service provider. ARA believes that allowing an employer to define a reasonable class of QSLPs will incentivize adoption of QSLP programs by reducing the burden of administering the program and allowing the employer to align the program with its reasonable business objectives. Therefore, ARA recommends the IRS clarify that plans are permitted to limit the QSLPs that are eligible to be matched under the plan.

7. Payments Eligible to Be QSLPs

Section 401(m)(4)(D) defines the term 'qualified student loan payment' to generally mean a payment made by an employee in repayment of a qualified education loan (as defined in IRC §221(d)(1)) incurred by the employee to pay qualified higher education expenses. Significant uncertainty exists in the retirement plan community regarding the meanings of the terms "qualified education loan" and "incurred by the employee." Many ARA members have raised questions related to these terms, such as whether an employee who cosigned a loan for a child has "incurred" the loan. Further, a participant making the certification may not appreciate the detailed requirements of these terms or the requirements underlying the definition of "qualified higher education expenses."

ARA believes that these terms generally are equally applicable in the case of the IRC §221 student loan interest deduction and therefore the IRS does not need to issue new guidance on these matters. ARA does, however, recommend that IRS update the Employee Plans portion of its website to aid participants and plan sponsors in locating and understanding the applicable rules. While Publication 570 is helpful, it discusses rules that do not apply in the case of QSLPs and might confuse participants who are attempting to confirm their eligibility to certify they have made QSLPs. Publication of informal guidance on the Employee Plans website that notes the rules and definitions applicable to QSLPs would allow plan sponsors to direct employees to clear guidance to ensure that employee certifications regarding QSLPs are made correctly.

8. Amendments

Section 110(g)(3) of SECURE 2.0 directs Treasury to prescribe a model amendment to implement QSLP matching contributions. A model amendment will aid the adoption of QSLPs, for employers using pre-approved plans or individually designed plans, by reducing implementation costs and providing employers with more certainty regarding compliance. ARA recommends such model amendment be published as soon as possible and no later than the middle of 2025 to give employers adequate time to utilize the model amendment when developing their SECURE 2.0 amendments.

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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