

**SUPPORTING STATEMENT**  
OMB Control Number 1545-1669

**(TD 9169) Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m)**

**(NOT 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**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Treasury Decision (TD) 9169 provides comprehensive requirements for cash or deferred arrangements under Internal Revenue Code (IRC) section 401(k) and matching and employee contributions under IRC section 401(m). The TD updated the regulations published in 1991 for statutory changes and incorporated guidance issued since 1991.

Section 401(k) of the IRC permits certain qualified plans to contain a cash or deferred arrangement (CODA) under which an employee can elect to receive an amount in cash or have the employer make a contribution of such amount to the qualified plan maintaining the CODA. Amounts which the employee puts into the cash or deferred arrangement are not taxable to the employee until distributed from the qualified plan.

IRC Section 401(k)(3) contains special discrimination tests relating to coverage and contributions under CODAs. A plan containing a CODA must meet these requirements in order to maintain its qualified tax-exempt status.

In general, the amount that highly compensated employees may defer under a CODA in a given plan year is limited by how much non-highly compensated employees defer in the prior plan year (prior year testing). Plans may also test for nondiscrimination by using amounts non-highly compensated employees defer in the current year (current year testing). Amounts which exceed the amount that highly compensated employees can defer are referred to as excess contributions.

IRC Section 401(k)(12) and Section 401(m)(11) provide alternate safe harbor methods of satisfying the nondiscrimination tests of section 401(k)(3) and 401(m)(2). In order to take advantage of these methods, plan sponsors must amend their plans and must provide plan participants with written notices describing the benefits available under the plan. Section 401(k)(8) of the Code provides that excess contributions may be recharacterized as employee contributions contributed to a pension plan. Thus, such amounts must be included in the employee's income. Since the employee now has additional income, such income must be reported to appropriate persons and institutions just like any other

income. This is the reason for the reporting requirements in §1.401(k)-2(b)(3) and is performed using the Form 1099-R. OMB Control Number 1545-0119 includes Form 1099-R and its burden.

Under IRC sections 401(k)(12) and 401(m)(11), plans containing a CODA or providing for matching or employee contributions may use the design-based safe harbors contained in these sections to satisfy the nondiscrimination requirements of the actual deferral percentage (ADP) or actual contribution percentage (ACP) tests. The safe harbor rules permit plans to satisfy the nondiscrimination requirements by meeting the contribution and notice requirements of Code sections 401(k)(12) or 401(m)(11) without being required to perform the complex mathematical comparisons required by the ADP and ACP tests. This safe harbor method of compliance is particularly attractive to small businesses as a way to avoid the expense of ADP/ACP testing.

IRC sections 401(k)(12)(D) and 401(m)(11)(A)(ii) require that certain notices be provided to eligible participants in safe harbor plans to apprise them of their rights and obligations under the plans. IRC section 401(k)(2)(B)(IV) permits withdrawals from a 401(k) plan on account of hardship of the employee in certain cases. IRC section 1.401(k)-1(d)(3)(ii) permits an employer to rely on an employee's written representation that an immediate and heavy financial need cannot reasonably be relieved from certain sources listed in the regulation.

Notice 2024-63 provides guidance in the form of questions and answers with respect to section 110 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117 328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act). Section 110 of the SECURE 2.0 Act allows employers to make matching contributions on account of employees' qualified student loan payments (QSLPs) under section 401(k) plans, section 403(b) plans, SIMPLE IRA plans, and governmental section 457(b) plans. Section 110 of the SECURE 2.0 Act requires the collection of information described in this supporting statement.

Section 110(b) of the SECURE 2.0 Act added section 401(m)(4)(D) of the Internal Revenue Code (IRC), which defines a QSLP as a payment made by an employee in repayment of a qualified education loan (as defined in section 221(d)(1)) incurred by the employee to pay qualified higher education expenses, subject to the section 401(m)(4)(D)(i) amount limitation and the section 401(m)(4)(D)(ii) certification requirement. Pursuant to section 401(m)(4)(D)(ii), for a qualified education loan payment to be a QSLP, the employee making the qualified education loan payment must certify annually to the employer making the matching contribution that payment has been made on the loan.

Section 110(c) of the SECURE 2.0 Act added section 401(m)(13) of the IRC, which provides, in part (in section 401(m)(13)(C)), that an employer may rely on an employee certification of payment under section 401(m)(4)(D)(ii). Section 110(d) of the SECURE

2.0 Act includes rules for SIMPLE IRA plans that include a QSLP match feature that are generally analogous to the QSLP match rules in section 401(m)(4)(D) and 401(m)(13).

The collection of information in Notice 2024-63 are third-party disclosures and recordkeeping requirements contained in the answers to Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1. The OMB approval for 1545-1669 is covering the third-party disclosures and recordkeeping requirements.

The third-party disclosure requirements within Notice 2024-63 are related to employees, lenders, and/or third-party administrators providing information to a plan to satisfy the section 401(m)(4)(D)(ii) certification requirement.

The recordkeeping requirements within Notice 2024-63 are related to the necessity of a plan keeping records of the information required to satisfy the section 401(m)(4)(D)(ii) certification requirement.

## **2. USE OF DATA**

The collections of information contained in these regulations are contained in §§1.401(k)-1(d)(3)(iii)(C), 1.401(k)-2(b)(3), 1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(k)-4(d)(3), 1.401(m)-3(e), 1.401(m)-3(g) and 1.401(m)-3(h).

The information required by §§1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(k)-4(d)(3), 1.401(m)-3(e), 1.401(m)-3(g), 1.401(m)-3(h) and 1.401(k)-4 are used by the IRS to comply with requirements of sections 401(k)(12)(D) and 401(m)(11)(A)(ii) regarding notices that must be provided to eligible participants to apprise them of their rights and obligations under certain plans. This information will be used by participants to determine whether to participate in the plan, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The information required by §1.401(k)-2(b)(3) will be used by employees to file their income tax returns and by the Internal Revenue Service to assess the correct amount of tax. The information provided under §1.401(k)-1(d)(3)(iii)(C) will be used by employers in determining whether to make hardship distributions to participants.

The collection of information in Notice 2024-63 is contained in the answers to Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1. This information is required for payments on qualified education loans to be QSLPs upon which an employer may make matching contributions. Plan sponsors will use the collected information to process claims for QSLP matches for employees in the plan. The information will be used by the Internal Revenue Service and taxpayers to verify that the proper amount of tax is reported.

## **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS has no plans to offer electronic filing as these are third-party disclosures and recordkeeping requirements only.

**4. EFFORTS TO IDENTIFY DUPLICATION**

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Small businesses should not be disadvantaged as the content of the notice has been structured to request the least amount of information while still satisfying the requirements of the statute and the needs of the IRS.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Consequences of less frequent collection on federal programs or policy activities could result in an increase in taxpayers filing inaccurate tax returns and IRS not confirming qualified plan that complies with applicable qualification requirements to avoid adverse tax consequences.

The section 401(m)(4)(D)(ii) certification requirement involves an employee annually certifying payment on a qualified education loan to the employer making the QSLP match. Consequences of less frequent collection, i.e., collection less frequently than annually, would be a violation of section 110 of the SECURE 2.0 Act, and such payments on qualified education loans that were certified less frequently than annually would not be QSLPs upon which a QSLP match could be based.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 C.F.R. 1320.5(d)(2)**

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

**8. FEDERAL REGISTER NOTICES**

In response to the Federal register notice dated January 23, 2026, (91 FR 2998), we have received one public comments from The ERISA Industry Committee (ERIC). The full comments will be included within submission to the Office of Management and Budget (OMB). The summary of the comments and the IRS responses are below:

Comment Number	Summary of public comment	IRS response
1.	Suggestions for additional guidance and coordination between the IRS and Department of Education to facilitate electronic verification would be very helpful as it complicates the ability of plan sponsors to implement or expand the programs.	The IRS thanks the commentor for the suggestions. At this time the IRS cannot respond to upcoming regulatory work, but will take the concern and suggestion into consideration.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

These are third-party disclosures and recordkeeping requirements. There is no Personally Identifiable Information (PII) collected by IRS. Therefore, this collection is not impacted by the Privacy Act and does not require a Privacy Impact Assessment (PIA) or System of Records Notice (SORN).

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The collections of information contained in these regulations are contained in §§1.401(k)-1(d)(3)(iii)(C), 1.401(k)-2(b)(3), 1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(k)-4(d)(3), 1.401(m)-3(e), 1.401(m)-3(g) and 1.401(m)-3(h).

The information required by §§1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(k)-4(d)(3), 1.401(m)-3(e), 1.401(m)-3(g), 1.401(m)-3(h) and 1.401(k)-4 are required by the IRS to comply with requirements of sections 401(k)(12)(D) and 401(m)(11)(A)(ii) regarding notices that must be provided to eligible participants to apprise them of their rights and obligations under certain plans.

The collection of information contained in Notice 2024-63 is contained in Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1. The estimated burden per respondent is .25 hours, with an average of .25 hours, for a total estimated third-party disclosure and recordkeeping burden of 25,000 to 125,000 hours annually.

The burden is comprised of a range from 100,000 to 500,000 participant responses, for an average number of responses of 300,000  $((100,000+500,000)/2=300,000)$  and a range of plan administrator responses from 58,000 to 117,000, for an average number of responses of 87,500  $((58,000+117,000)/2=87,500)$ .

Authority	Section	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
TD 9169	§§1.401(k) and §§1.401(m)	87,500	1	87,500	Varies from 0.33 to 2.5 hours, for an average of 1.42 hours	124,250
Notice 2024-63	Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1 (Recordkeeping and third-party burden on participants)	300,000	1	300,000	.250 hr.	75,000
Notice 2024-63	Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1 (Recordkeeping and third-party burden on plan administrators)	87,500	1	87,500	.250 hr.	21,875
	<b>Totals</b>	<b>475,000</b>		<b>475,000</b>		<b>221,125</b>

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

### **14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There is no cost to the government for these third-party disclosures and recordkeeping requirements.

### **15. REASONS FOR CHANGE IN BURDEN**

There are no changes to the TD 9179 collections from the previous OMB approval. For the TD 9179 burden, IRS is increasing the number of respondents to 87,500. This is increasing the burden hours by 124,250 due to a change in Agency estimate.

The Notice 2024-63 increases the number of employees who are eligible to receive matching contributions to include employees who make QSLPs. This is increasing the burden for the OMB submission by 96,875 hours due to a new statute.

The Information Collection (IC) for Notice 98-52 is being removed to prevent duplication, as burden for this requirement is now under the final rule, TD 9169.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis, and publication.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

The IRS believes that displaying the OMB expiration date is inappropriate because it would cause confusion by leading taxpayers to believe that the collection expires as of the expiration date. Taxpayers may not be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions to the certification statement.