

Guidance Under Section 110 of the SECURE 2.0 Act with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments

Notice 2024-63

I. PURPOSE

This notice 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 (QSLP matches). Section 110 of the SECURE 2.0 Act applies to contributions made for plan years beginning after December 31, 2023.

This notice provides guidance on discrete issues under section 110 of the SECURE 2.0 Act to assist plan sponsors in implementing QSLP match programs. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing proposed regulations with respect to section 110 of the SECURE 2.0 Act, and, accordingly, invite comments on this notice and any other aspect of section 110.

II. BACKGROUND

Section 221(d)(1) of the Internal Revenue Code (the Code) defines a qualified education loan as any indebtedness incurred by a taxpayer solely to pay qualified higher education expenses, subject to the conditions of section 221(d)(1)(A)-(C), which

provide that the qualified higher education expenses must be (i) incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred, (ii) paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and (iii) attributable to education furnished during a period during which the recipient was an eligible student.

Section 401(a) sets forth requirements for a trust that forms part of a qualified retirement plan to constitute a qualified trust.

Section 401(k)(3) sets forth participation and nondiscrimination standards for qualified cash or deferred arrangements (CODAs). Section 401(k)(3)(A)(ii) provides that in order to be a qualified CODA for a plan year, the actual deferral percentage (ADP) of eligible highly compensated employees (HCEs) under the CODA may not exceed by more than specified margins the ADP of eligible nonhighly compensated employees (NHCEs) under the CODA for the plan year.

Section 401(m) sets forth nondiscrimination requirements with respect to matching contributions to a defined contribution plan. Section 401(m)(1) provides that a defined contribution plan is treated as meeting the requirements of section 401(a)(4) with respect to the amount of any matching contribution or employee contribution for a plan year only if the plan passes the actual contribution percentage requirement of section 401(m)(2) (the ACP test).

Section 403(b) sets forth requirements applicable to contributions to a section 403(b) plan made for employees who are performing services for a public school of a State or a local government or for employees of employers that are tax-exempt organizations under section 501(c)(3). Section 403(b)(12)(A)(i) provides that the

requirements of section 401(m) apply to matching contributions made to a section 403(b) plan in the same manner as if the plan were a qualified retirement plan.

Section 408(p) sets forth requirements for making employee salary reduction contributions and nonelective employer and matching contributions to an employee's SIMPLE IRA pursuant to a SIMPLE IRA plan.

Section 410(b) sets forth minimum coverage requirements for a plan to constitute a qualified trust under section 401(a).

Section 457(b) sets forth requirements for a plan to constitute an eligible deferred compensation plan. Section 457(b) provides that an eligible deferred compensation plan is a plan established and maintained by an eligible employer that covers only individuals who perform service for the employer, and that meets the deferral limitations described in section 457(b)(2). Section 457(e)(1)(A) provides that an eligible employer is a State, a political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

Section 4979 provides for an excise tax on excess contributions and excess aggregate contributions (excess contributions result from a plan failing the ADP test, and excess aggregate contributions result from a plan failing the ACP test).

Section 4979(f)(1) provides for an exception to the tax to the extent excess contributions or excess aggregate contributions are corrected before the close of the first 2½ months of the following plan year. This correction period is extended to the close of the first six months of the following plan year in the case of an eligible automatic contribution arrangement, as defined in section 414(w)(3) (EACA).

Section 1.401(m)-1(b)(4) sets forth the exclusive rules for aggregating and disaggregating defined contribution plans that provide for employee contributions and matching contributions. Under § 1.401(m)-1(b)(4)(iii), a plan is defined as a plan within the meaning of § 1.410(b)-7(a) and (b), after application of the mandatory disaggregation rules of § 1.410(b)-7(c) (including disaggregation rules for plans that cover both collectively bargained and non-collectively bargained employees) and the permissive aggregation rules of § 1.410(b)-7(d), as modified by § 1.401(m)-1(b)(4)(v). Section 1.410(b)-7(c)(4)(i)(A) requires that if a plan has multiple disaggregation populations, the disaggregation populations must be disaggregated and treated as separate plans.

Section 1.401(m)-2(a)(4) sets forth timing rules for taking into account employee contributions and matching contributions under the ACP test. Under § 1.401(m)-2(a)(4)(iii), a matching contribution is taken into account in determining the actual contribution ratio (as defined in § 1.401(m)-5) for an eligible employee for a plan year or applicable year only if (a) the matching contribution is allocated to the employee's account under the terms of the plan as of a date within that year, (b) the matching contribution is made on account of (or the matching contribution is allocated on the basis of) the employee's elective deferrals or employee contributions for that year, and (c) the matching contribution is actually paid to the trust no later than the end of the 12-month period immediately following the year that contains that date.

Section 110(a) of the SECURE 2.0 Act added section 401(m)(4)(A)(iii) of the Code, which amends the definition of matching contributions to include employer contributions made to a defined contribution plan on account of an employee's QSLP.

Section 110(b) of the SECURE 2.0 Act added section 401(m)(4)(D) of the Code, which defines a QSLP as a payment that was 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)(i), the amount of an employee's aggregate qualified education loan payments for a year that can be QSLPs cannot exceed an amount equal to the limitation applicable under section 402(g) for the year (or, if an employee's compensation under section 415(c)(3) for the year is less than the limitation applicable under section 402(g) for the year, the employee's compensation), reduced by the employee's elective deferrals for the year.

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.

For purposes of a QSLP, the term qualified higher education expenses means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution (as defined in section 221(d)(2) of the Code).

Section 110(c) of the SECURE 2.0 Act added section 401(m)(13) of the Code, which provides, in part, that QSLP matches shall be treated as matching contributions if the following requirements of section 401(m)(13)(A)(i)-(iv) are satisfied: (i) a plan provides matching contributions on account of elective deferrals (elective deferral

matches) at the same rate it provides QSLP matches; (ii) the plan provides QSLP matches only on behalf of employees otherwise eligible to receive elective deferral matches; (iii) under the plan, all employees who are eligible to receive elective deferral matches are eligible to receive QSLP matches; and (iv) the plan provides that QSLP matches vest in the same manner as elective deferral matches.

Section 401(m)(13)(B)(i) provides that, for purposes of section 401(m)(13)(A)(iii), section 401(a)(4), and section 410(b), QSLP matches shall not fail to be treated as available to an employee solely because the employee does not have debt incurred under a qualified education loan. In addition, section 401(m)(13)(B)(iv) provides that the elective deferrals of employees who receive QSLP matches may be tested separately from the elective deferrals of other employees for purposes of the ADP test of section 401(k)(3)(A)(ii). Section 401(m)(13)(C) states 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 added section 408(p)(2)(F) of the Code, which provides that an arrangement under a SIMPLE IRA plan shall not fail to be a qualified salary reduction agreement solely because QSLPs are treated as elective employer contributions (pursuant to section 408(p)(2)(A)(i)(I)) under the plan.

Section 408(p)(2)(F) includes rules for SIMPLE IRAs 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).

Section 110(e) of the SECURE 2.0 Act amended section 403(b)(12)(A) of the Code to provide that whether a section 403(b) plan offers a QSLP match shall not be

taken into account for purposes of determining whether the plan satisfies the universal availability requirement of section 403(b)(12)(A)(ii).

Section 110(f) of the SECURE 2.0 Act amended section 457(b) of the Code to state, in part, that a section 457(b) plan maintained by an employer described in section 457(e)(1)(A) (governmental section 457(b) plan) shall not fail to be an eligible deferred compensation plan merely because that plan, or a section 401(a) or 403(b) plan maintained by the same employer, adopts a QSLP match feature as described in section 401(m)(13).

Section 110(g) of the SECURE 2.0 Act provides for the Secretary of the Treasury (or the Secretary's delegate) to prescribe regulations for purposes of implementing section 110, including regulations:

(1) permitting a plan to make QSLP matches at a different frequency than matching contributions are otherwise made under the plan, provided that the frequency is not less than annually;

(2) permitting employers to establish reasonable procedures to claim QSLP matches under the plan, including an annual deadline (not earlier than three months after the close of each plan year) by which a claim must be made; and

(3) promulgating model amendments which plans may adopt to implement QSLP matches for purposes of sections 401(m), 408(p), 403(b), and 457(b) of the Code.

III. GUIDANCE ON SECTION 110 OF THE SECURE 2.0 ACT

A. QSLP Match Overview

Q. A-1: What is a QSLP?

A. A-1: A QSLP is a payment (1) made by an employee during a plan year in repayment of a qualified education loan incurred by the employee to pay for qualified higher education expenses of the employee, the employee's spouse, or the employee's dependent, (2) that does not exceed, when aggregated with other such payments for the year, the section 401(m)(4)(D)(i) amount limitation for the plan year, and (3) certified for the plan year by the employee in a manner that satisfies the section 401(m)(4)(D)(ii) certification requirement.

For a qualified education loan to be treated as incurred by an employee, the employee who makes a payment on the qualified education loan must have a legal obligation to make the payment under the terms of the loan. In general, a cosigner has a legal obligation to make payments under the terms of a loan, but, unless the primary borrower defaults under a loan, a guarantor does not have a legal obligation to make payments under the loan. For example, if an eligible employee is a cosigner on a qualified education loan for the employee's dependent, both the eligible employee and the dependent may have a legal obligation to make payments under the terms of the loan. However, only the individual who makes payments under the qualified education loan can receive a QSLP match on account of those payments.

Q. A-2: What plans may include a QSLP match feature?

A. A-2: A QSLP match feature may be added to a section 401(k) plan, a section 403(b) plan, a SIMPLE IRA plan under section 408(p), or a governmental

section 457(b) plan. In general, this notice describes the QSLP match rules by referring to statutory language applicable to plans other than SIMPLE IRAs. For QSLP match rules specific to SIMPLE IRA plans, see Q&A E-1 of this notice.

Q. A-3: What is an employee's maximum QSLP for a year?

A. A-3: An employee's maximum QSLP for a year is described below for section 401(k) and section 403(b) plans, and for governmental section 457(b) plans. For QSLP match rules specific to SIMPLE IRA plans, see Q&A E-1 of this notice.

(1) Section 401(k) and section 403(b) plans

Pursuant to the QSLP definition in section 401(m)(4)(D), an employee's qualified education loan payments can be QSLPs in a section 401(k) or section 403(b) plan only to the extent such payments in the aggregate for a year do not exceed an amount equal to the limitation applicable under section 402(g) (or, if lesser, the employee's compensation as described under section 415(c)(3)), reduced by the employee's elective deferrals for the year.

(2) Governmental section 457(b) plans

Although the limitation applicable under section 402(g) and the term elective deferrals are not applicable to section 457(b) plans, the reference to section 402(g) in section 401(m)(4)(D)¹ provides the dollar amount used in limiting a QSLP, and a similar concept of salary deferrals applies to section 457(b) plans. Accordingly, for purposes of calculating the maximum QSLPs for an employee for a year in a governmental section 457(b) plan, the amount of the employee's salary deferrals under the governmental section 457(b) plan for the year is the amount that is subtracted from the

¹ Section 401(m)(13), through its reference to QSLP matches, incorporates for governmental section 457(b) plans the provisions of section 401(m)(4)(D).

limitation applicable under section 402(g) (or, if lesser, the employee's compensation as described under section 415(c)(3)). The limitation under section 402(g) is the same dollar amount as the applicable dollar limit under section 457(e)(15)(A).

Q. A-4: May a plan include provisions that limit QSLP matches to only certain qualified education loans, such as qualified education loans for an employee's own education, for a particular degree program (e.g., Bachelor of Arts, Juris Doctor, or Master of Business Administration), or for attendance at a particular school?

A. A-4: No. Section 401(m)(13)(A)(iii) provides that all employees (except as described in Q&A A-5 of this notice) eligible to receive matching contributions on account of elective deferrals must be eligible to receive matching contributions on account of "qualified student loan payments."

The reference in section 401(m)(13)(A)(iii) to qualified student loan payments is to qualified student loan payments that satisfy the definition in section 401(m)(4)(D) (as described in Q&A A-1 of this notice). Pursuant to section 401(m)(4)(D), a qualified student loan payment is a payment that was made by an employee in repayment of a qualified education loan incurred by the employee. A plan that includes a definition of QSLP that covers only a subset of employees who have made qualified education loan payments will violate the requirement in section 401(m)(13)(A)(iii) that QSLP matches be available to all employees who are eligible for elective deferral matches.² Thus, for

² Section 401(m)(13)(B)(i) provides, in part, that for purposes of section 401(m)(13)(A)(iii), QSLP matches "shall not fail to be treated as available to an employee solely because the employee does not have debt incurred under a qualified education loan." However, section 401(m)(13)(B)(i) does not provide similar "shall not fail to be treated as available" language for an employee who has debt incurred under a qualified education loan but is excluded from eligibility for a QSLP match under plan terms. Accordingly, if all employees with qualified education loans are not eligible for a QSLP match under plan terms, the plan's QSLP match will not be treated as being available to all employees under section 401(m)(13)(A)(iii).

example, a plan cannot limit QSLP matches to qualified education loan payments for an employee's own education, for a particular degree program, or for attendance at a particular school.

Q. A-5: May a plan with a QSLP match feature include provisions that exclude employees from receiving QSLP matches even though those employees are eligible to receive elective deferral matches, or may a plan with a QSLP match feature include provisions that exclude employees from receiving elective deferral matches even though those employees are eligible to receive QSLP matches?

A. A-5: No. Pursuant to section 401(m)(13)(A)(iii), all employees eligible to receive elective deferral matches under a plan with a QSLP match feature must be eligible to receive QSLP matches. Also, pursuant to section 401(m)(13)(A)(ii), a plan with a QSLP match feature must provide QSLP matches only on behalf of employees eligible to receive elective deferral matches. Thus, a plan with a QSLP match feature may not include provisions that exclude employees from receiving QSLP matches if those employees are eligible to receive elective deferral matches, and a plan with a QSLP match feature may not include provisions that exclude employees from receiving elective deferral matches if those employees are eligible to receive QSLP matches.

In general, this requirement of uniform treatment for elective deferral matches and QSLP matches applies to all employees covered by a plan, so that employees may not be excluded from QSLP matches on an individual employer, business unit, division, location, or other similar basis. However, for purposes of determining what constitutes a plan under section 401(m)(13)(A), the disaggregation rules under § 1.410(b)-7(c)(4), including with respect to collectively bargained employees, apply. Thus, a plan may

include a QSLP match feature that applies only to non-collectively bargained employees without violating section 401(m)(13)(A)(ii) and (iii).

Example 1: Plan X is a section 401(k) plan. As an eligibility condition for Plan X's QSLP match, employees must remain employed through the QSLP match allocation date or through the last day of the plan year, but that condition is not included for the plan's elective deferral match. This eligibility condition on Plan X's QSLP match, which is not included for the plan's elective deferral match, causes Plan X to violate section 401(m)(13)(A)(iii).

Example 2: Plan Y is a section 403(b) plan. As an eligibility condition on Plan Y's elective deferral match, employees must remain employed through the elective deferral match allocation date or through the last day of the plan year, but that condition is not included for the plan's QSLP match. This eligibility condition on Plan Y's elective deferral match, which is not included for the plan's QSLP match, causes Plan Y to violate section 401(m)(13)(A)(ii).

Example 3: Plan Z is a section 401(k) plan. Plan Z covers both collectively bargained employees and non-collectively bargained employees, and provides elective deferral matches to all covered employees. However, Plan Z only provides QSLP matches to non-collectively bargained employees. Because the portion of Plan Z that covers non-collectively bargained employees and the portion of Plan Z that does not cover collectively bargained employees are treated as separate plans for purposes of section 401(m)(13)(A)(iii), the exclusion of collectively bargained employees from Plan Z's QSLP match does not cause Plan Z to violate section 401(m)(13)(A)(iii).

Q. A-6: May a QSLP match contributed for a plan year be based on a qualified education loan payment that was made during a different plan year?

A. A-6: No. Only an employee's qualified education loan payments that were made during a plan year are eligible to be counted for purposes of the employee's QSLP match for that plan year.³ This result is consistent with the timing rules for taking into account matching contributions for ACP testing under § 1.401(m)-2(a)(4)(iii).

Example 1: Even if a calendar-year plan has a final QSLP match claim deadline with respect to Plan Year 1 that is April 1 of Plan Year 2, an employee who does not make any QSLPs in Plan Year 1 and makes a QSLP on March 1 of Plan Year 2 is not eligible for a QSLP match for Plan Year 1.

Example 2: If a fiscal year plan has a plan year that begins on July 1 of Plan Year 2, an employee cannot receive a QSLP match for Plan Year 2 on account of a qualified education loan payment that was made in June of the calendar year that includes July 1 of Plan Year 2.

B. Employee Certification of QSLPs

Q. B-1: For an employee's qualified education loan payment to be a QSLP, must the employee certify that the payment satisfies the requirements to be a QSLP?

A. B-1: Yes. A qualified education loan payment is a QSLP only if the section 401(m)(4)(D)(ii) certification requirement is satisfied with respect to that payment. A plan may require a separate certification for each qualified education loan

³ Section 110(h) of the SECURE 2.0 Act indicates that the amendments made by section 110 shall apply to contributions made for plan years beginning after December 31, 2023. As a result, a QSLP match cannot be made on account of qualified education loan payments paid on or before December 31, 2023 (or, for non-calendar year plans that have adopted a QSLP match feature, before the first day of the plan year that includes the QSLP match if that date is later).

payment intended to qualify as a QSLP or permit an annual certification that applies for all qualified education loan payments intended to qualify as QSLPs for a year.

Q. B-2: What items of information about a qualified education loan payment must be received by a plan for the QSLP certification requirement to be satisfied?

A. B-2: To satisfy the section 401(m)(4)(D)(ii) certification requirement with respect to a qualified education loan payment, the following items of information must be received by a plan (including 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.

The section 401(m)(4)(D)(ii) certification requirement for any required item of information may be satisfied through affirmative certification by the employee. Alternatively, the section 401(m)(4)(D)(ii) certification requirement with respect to the amount of the loan payment in item (1), the date of the loan payment in item (2), and the confirmation of the employee as payor in item (3) may be treated as satisfied through independent verification by the employer or through passive certification by the employee. The confirmation that the loan being repaid is a qualified education loan in item (4) and incurred by the employee in item (5) can be certified only through affirmative certification by the employee. One method of satisfying the affirmative certification requirement for items (4) and (5) is through loan registration whereby an

employee provides information to the plan regarding items (4) and (5) before the first loan payment is made for which the employee claims a QSLP match.

For purposes of this notice, independent verification means a method of certification by which a plan is able to validate the accuracy of items (1), (2), and (3). For example, the independent verification requirement with respect to items (1), (2), and (3), including the requirement that the loan payment be made by the employee, is satisfied if an employer allows an employee to make qualified education loan payments through payroll deduction.

For purposes of this notice, passive certification means a method of certification by which (i) an employee provides written information about a qualified education loan to a plan regarding items (4) and (5), (ii) information about items (1) and (2) is provided from the lender to the plan, including through an employer, (iii) the plan notifies the employee of the information (including, if the plan uses passive certification with respect to item (3), a statement that the employer assumes that item (3) has been satisfied), and (iv) the employee is given a reasonable period to correct the information included in the employee notice. The employer does not have an obligation to inquire whether item (3) has been satisfied, so that the employer may assume item (3) has been satisfied unless the employer has actual knowledge to the contrary. The employee is treated as certifying the information provided in the employee notice if the employee does not correct the information within the reasonable period.

Example 1: Affirmative Certification, With or Without Registration

Plan W is a section 401(k) plan that includes a QSLP match feature. Under Plan W, an employee must make an annual affirmative certification that includes all five items

of information needed to submit a QSLP match claim and does not require any additional documentation to verify that information. If an employee provides the annual affirmative certification with respect to a QSLP match claim, the section 401(m)(4)(D)(ii) certification requirement is satisfied with respect to that QSLP match claim.

Alternatively, if Plan W were to require that items (4) and (5) be affirmatively certified one time pursuant to a loan registration and that items (1), (2), and (3) be affirmatively certified annually, the section 401(m)(4)(D)(ii) certification requirement would be satisfied with respect to a QSLP match claim if an employee were to provide the required initial loan registration and annual affirmative certifications with respect to the QSLP match claim.

Example 2: Registration and Independent Verification Through Payroll Deduction

Plan X is a section 403(b) plan that includes a QSLP match feature, and, under the plan, qualified education loan payments must be made through payroll deduction. To receive a QSLP match under Plan X, an employee must register a qualified education loan with the employer. This registration satisfies the certification requirement for items (4) and (5). In addition, because, under the plan, qualified education loan payments must be made through payroll deduction, which validates the accuracy of items (1), (2), and (3), the certification requirement for items (1), (2), and (3) is treated as satisfied through independent verification.

Example 3: Registration and Passive Certification

Plan Y is a governmental section 457(b) plan that includes a QSLP match feature. To receive a QSLP match under Plan Y, an employee must register a qualified education loan with a third-party service provider. This registration satisfies the

certification requirement for items (4) and (5). In addition, the third-party service provider receives information from the qualified education loan lender about items (1) and (2), but does not receive information about item (3) (because the qualified education loan lender is not able to provide information about the source of repayments to the third-party service provider). The third-party service provider notifies the employee of the information received from the lender about items (1) and (2), provides a statement to the employee that the employer assumes that item (3) has been satisfied (and the employer does not have actual knowledge to the contrary), and provides the employee with a reasonable period to correct items (1), (2), and (3). If the employee does not correct information about items (1), (2), and (3) within a reasonable period, the certification requirement for items (1), (2), and (3) is treated as satisfied through passive certification.

Q. B-3: Do the items of information required to satisfy the section 401(m)(4)(D)(ii) certification requirement need to be received annually by a plan?

A. B-3: Information about items (1), (2), and (3) must be received annually by a plan. Information about item (4) and item (5) does not need to be received annually by a plan if the employee registers the loan with the plan. However, if a qualified education loan is refinanced or the information contained in items (4) and (5) otherwise changes, updated information must be received by the plan about items (4) and (5), for example, through re-registration of the loan, in order for the section 401(m)(4)(D)(ii) certification requirement to be satisfied.

C. QSLP Match Reasonable Procedures

Q. C-1: What administrative procedures may a plan establish to implement a QSLP match feature?

A. C-1: A plan may establish any reasonable administrative procedures to implement a QSLP match feature. Whether procedures are reasonable is based on all relevant facts and circumstances, including whether QSLP matches are effectively available to all eligible employees and whether the procedures promote compliance with QSLP match requirements. Reasonable procedures include, but are not limited to, the procedures described in this notice.

Q. C-2: What administrative procedures may a plan establish with respect to QSLP match claim deadlines?

A. C-2: A plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines (including, but not limited to, quarterly deadlines) for QSLP match claim submissions, provided that each QSLP match claim deadline is reasonable. As described in Q&A C-1 of this notice, whether a plan's QSLP match claim deadline is reasonable is based on all relevant facts and circumstances. In determining whether a deadline is reasonable, relevant facts and circumstances include whether employees have a reasonable opportunity to collect and furnish claim submission documentation. An annual deadline that is three months after the end of a plan year is an example of a reasonable deadline.⁴

⁴ The Treasury Department and the IRS received comments expressing concern about the potential for the imposition of section 4979 excise taxes on excess contributions and excess aggregate contributions as a result of QSLP matches claimed after the 2½-month correction deadline under section 4979. Plans that adopt a QSLP match feature may avoid this excise tax concern by either adopting EACA provisions or adopting reasonable QSLP match claim deadlines that are earlier than 2½ months after the end of a plan year.

Q. C-3: Must a plan require that an employee submit verification in support of an employee's certification under section 401(m)(4)(D)(ii) that a qualified education loan payment is a QSLP?

A. C-3: No. Pursuant to section 401(m)(13)(C), it is a reasonable procedure for a plan to rely on an employee's annual certification that a qualified education loan payment satisfies the requirements to be a QSLP, without requiring any supporting verification.

A plan may, however, require verification that an employee's qualified education loan payment satisfies the requirements to be a QSLP, provided that the verification is made pursuant to established reasonable procedures. As described in Q&A C-1 of this notice, whether a plan's QSLP verification procedures are reasonable is based on all relevant facts and circumstances. In determining whether verification procedures are reasonable, relevant facts and circumstances include whether the verification procedures are reasonably available to a particular employee or for a particular qualified education loan.

Accordingly, a plan may establish reasonable procedures that require independent verification that an employee has made payments during a plan year on a qualified education loan, or passive certification by the employee. However, a plan may not establish independent verification or passive certification procedures that are not reasonably available with respect to a particular employee. For example, 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, such as by submission of cancelled checks or qualified education loan statements.

D. QSLP ADP Testing

Q. D-1: For a plan that includes a QSLP match feature, how is optional separate ADP testing applied pursuant to section 401(m)(13)(B)(iv)?

A. D-1: A plan that includes a QSLP match feature may apply ADP testing pursuant to section 401(m)(13)(B)(iv) by applying a single ADP test for all employees or by applying a separate ADP test for employees who receive QSLP matches and a main ADP test that includes employees who do not receive QSLP matches. A plan that applies a separate ADP test for employees who receive QSLP matches may use either of the methods described below (Method 1 or Method 2). These alternative methods provide testing flexibility so that section 401(m)(13)(B)(iv) provides ADP testing relief without regard to whether employees who both receive QSLP matches and make elective deferrals include differing proportions of HCEs and NHCEs and without regard to whether the HCEs and NHCEs included in this group of employees have differing deferral percentages. For example, the separate ADP test under Method 1 may be helpful if NHCEs who receive QSLP matches have a higher deferral percentage than HCEs who receive QSLP matches, while the separate ADP test under Method 2 may be helpful if HCEs who receive QSLP matches have a higher deferral percentage than NHCEs who receive QSLP matches.

Method 1: Employees who are tested separately include all employees who receive QSLP matches, without regard to whether they also make elective deferrals. Employees who do not receive QSLP matches are not included in this separate ADP

test, but instead, are taken into account under the main ADP test. The elective deferrals of the employees who receive QSLP matches and also make elective deferrals are taken into account in performing the separate test and are excluded from the main ADP test.

Method 2: Employees who are tested separately include all employees who receive QSLP matches, without regard to whether they also make elective deferrals. However, unlike the separate test under Method 1, the elective deferrals of the employees who receive QSLP matches and also make elective deferrals (along with the elective deferrals of employees who do not receive QSLP matches) are taken into account in performing the main ADP test and are disregarded in performing the separate ADP test.

The following chart summarizes, and highlights the differences between, Method 1 and Method 2:

	Method 1	Method 2
Main ADP test	• Testing includes employees who do not receive QSLP matches. • Testing includes only elective deferrals for employees <u>who do not receive QSLP matches</u>.	• Testing includes employees who do not receive QSLP matches <u>and employees who both receive QSLP matches and make elective deferrals</u>. • Testing includes elective deferrals for employees <u>who both receive QSLP matches and make elective deferrals</u>.
Separate ADP Test	• Testing includes employees who receive QSLP matches. • Testing <u>includes</u> elective deferrals for employees who both receive QSLP matches and make elective deferrals.	• Testing includes employees who receive QSLP matches. • Testing <u>excludes</u> elective deferrals for employees who both receive QSLP matches and make elective deferrals.

E. Miscellaneous Issues

Q. E-1: How do the QSLP match rules apply to SIMPLE IRA plans?

A. E-1: In general, the QSLP match rules described in this notice with respect to section 401(k), 403(b), and governmental 457(b) plans apply in a similar manner to a QSLP match feature in a SIMPLE IRA plan. For example, although section 401(m)(13)(C) does not apply to SIMPLE IRA plans, a SIMPLE IRA plan may rely on an employee's certification that a qualified education loan payment satisfies the requirements to be a QSLP and may adopt other reasonable procedures described in Q&A C-3 to determine that a qualified education loan payment is a QSLP.

However, the QSLP match rules described in this notice that relate to requirements that do not apply to SIMPLE IRA plans (for example, rules relating to the treatment of QSLP matches for purposes of nondiscrimination testing, including separate ADP testing described in Q&A D-1 of this notice) do not apply to a QSLP match feature in a SIMPLE IRA plan.

In addition, an employee's maximum QSLPs for a year with respect to a SIMPLE IRA plan are determined differently from other plans. Pursuant to section 408(p)(2)(F)(i), an employee's qualified education loan payments can be QSLPs in a SIMPLE IRA plan only to the extent such payments do not exceed the applicable dollar amount under section 408(p)(2)(E) (after application of section 414(v)) for the year, or, if lesser, the employee's compensation (as defined in section 415(c)(3)), reduced by any other elective employer contributions the employee elected for the year pursuant to section 408(p)(2)(A)(i)(I).

Q. E-2: May a QSLP match feature be added as a mid-year change to a safe harbor plan, as described in Notice 2016-16, 2016-7 I.R.B. 318?

A. E-2: Yes. A QSLP match feature may be added as a mid-year change to a safe harbor plan (that is, a safe harbor plan described in section 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12)), provided that the notice and election opportunity conditions in section III.C of Notice 2016-16 are satisfied. Further, a mid-year change to a safe harbor plan to add a QSLP match feature is not a prohibited mid-year change, as described in Section III.D of Notice 2016-16.

Q. E-3: May a plan provide for QSLP matches to be contributed at a different frequency than elective deferral matches?

A. E-3: Yes. A plan may provide for QSLP matches to be contributed at a different frequency than elective deferral matches, provided that QSLP match contributions are required to be contributed not less frequently than annually. In addition, a plan may provide for QSLP matches to be contributed at a different frequency than elective deferral matches without violating the requirement under section 401(m)(13)(A)(i) that the plan provide elective deferral matches at the same rate as QSLP matches. For example, a section 401(k) plan that includes a QSLP match feature may provide for QSLP matches to be contributed once each year and for elective deferral matches to be contributed on a biweekly payroll basis.

Q. E-4: In the event an employee's certification of a QSLP is determined to be incorrect, must a match based on that certification be corrected?

A. E-4: No. Even if an employee's certification of a QSLP is determined to be incorrect, a match based on that certification does not need to be corrected. If a match

based on an incorrect certification is not corrected, it may be treated as a QSLP match. However, a QSLP match is permitted to be corrected to the extent an employee's certification of a QSLP is determined to be incorrect, provided that all QSLP matches made under similar circumstances are corrected. For example, if an employee's QSLP match for a plan year is corrected because the qualified education loan on which the QSLP match was based is later forgiven (causing the employee's certification of a QSLP to be incorrect), all QSLP matches for the plan year must be corrected to the extent qualified education loans on which QSLP matches were based are later forgiven. The option not to correct an employee's QSLP match based on an incorrect certification, as described in this Q&A E-4 of this notice, does not apply with respect to an operational failure in administering a QSLP match feature, including a failure to satisfy the section 401(m)(4)(D)(ii) certification requirement.

Q. E-5: Are plans required to provide for contributions of QSLP matches on a rolling basis as employees submit QSLP claims (similar to the timing of contributions under section 125 flexible spending accounts)?

A. E-5: No. Plans may, but are not required to, provide for contributions of QSLP matches on a rolling basis. For example, plans may provide for contributions of QSLP matches for a plan year to be made at the same time for all employees receiving QSLP matches for the plan year.

Q. E-6: How does section 409A apply to a nonqualified deferred compensation (NQDC) plan that is linked to a plan with a QSLP match feature?

A. E-6: Sections 1.409A-2(a)(9) and 1.409A-3(j)(5) provide relief with respect to the election-timing and anti-acceleration rules of section 409A for certain changes in the

amount credited under an NQDC plan that result from an employee's action or inaction with respect to elective deferrals and certain other contributions to a qualified employer plan (as defined in § 1.409A-1(a)(2)). For purposes of these election-timing and anti-acceleration rules, an employee's action or inaction with respect to QSLPs will be treated as an action or inaction with respect to elective deferrals. The Treasury Department and the IRS anticipate issuing proposed regulations under section 409A that will conform §§ 1.409A-2(a)(9)(iv) and 1.409A-3(j)(5)(iv).

IV. APPLICABILITY DATE

This notice applies for plan years beginning after December 31, 2024. For plan years beginning before January 1, 2025, a plan sponsor may rely on a good faith, reasonable interpretation of section 110 of the SECURE 2.0 Act. The guidance in this notice is an example of a good faith, reasonable interpretation of section 110 of the SECURE 2.0 Act.

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS anticipate issuing proposed regulations with respect to section 110 of the SECURE 2.0 Act and, accordingly, invite comments and suggestions regarding the matters discussed in this notice and, generally, on section 110 of the SECURE 2.0 Act. In particular, the Treasury Department and the IRS request comments on:

(1) Whether additional guidance would be helpful relating to passive certification or independent verification;

(2) Whether, for a plan that provides for QSLP matches to be made more frequently than annually, guidance would be helpful in the case of an employee who

receives a QSLP match early in a year before it is known whether subsequent elective deferrals will reduce the employee's maximum QSLP for the year;

(3) Whether additional examples of reasonable procedures would be helpful with respect to QSLP matches;

(4) Whether additional guidance would be helpful concerning the application of the QSLP rules to SIMPLE IRA plans; and

(5) Whether additional guidance would be helpful concerning the application of the QSLP rules to SIMPLE 401(k) plans.

Comments should be submitted in writing on or before (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER) and should include a reference to Notice 2024-63. Comments submitted after (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER) will be considered if doing so will not delay the issuance of proposed regulations with respect to section 110 of the SECURE 2.0 Act. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS Notice 2024-63" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-63), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

VI. PAPERWORK REDUCTION ACT

The collection of information contained in this notice will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507) under OMB control number 1545-1669. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are contained in Q&A B-1, Q&A B-2, Q&A B-3, Q&A C-3, and Q&A E-1 of this notice. This information will be used by plan administrators to administer QSLP match programs. The third-party disclosures and recordkeeping requirements will be submitted to OMB for review and approval in accordance with 5 CFR 1320.10.

The likely respondents are employees who are participants in plans that adopt a QSLP match feature and administrators of plans that adopt a QSLP match feature.

Estimated number of respondents: 158,000 to 617,000.

Estimated frequency of responses: Annually.

Estimated average time per response: .25 hours.

Estimated total annual burden: 39,500 to 154,250 hours.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

VII. DRAFTING INFORMATION

The principal author of this notice is Isaac Stein of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For

further information regarding this notice, contact Isaac Stein at (202) 317-6320 (not a toll-free call).