





Qualified Student Loan Program: QSLP Into Something More Comfortable

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Your Presenters Today



Alison J. Cohen



S. Derrin Watson



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Agenda

- Student Loan Program History
- SECURE 2.0 QSLP Basics
- What is a QSLP?
- Understanding QSLP Matching Rules
- Employee Certification of QSLP
- ADP Testing Magic
- Other Tidbits



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ONCE UPON A TIME




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The Legal Hurdle

- A qualified retirement plan with a 401(k) salary reduction feature is prohibited from conditioning any other benefits on the employee electing to have its employer make or refrain from making contributions in lieu of receiving cash, notwithstanding employer matching contributions.
 - Known as the "contingent benefit rule," Internal Revenue Code ("Code") Section 401(k)(4)(A) and Treas. Reg. 1.401(k)-1(e)(6), prevents an Employer from adding additional restrictions on the ability to make Elective Deferrals.
 - "A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election."

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The Challenge

- 55% - 57% of students graduating college took on student loans
- Average debt owed is \$28,950 (monthly payments \$500)
- Certain states have average debt as high as \$54,708
- Post-graduate debt is about \$88,220
- Certain doctorate degrees can be as high as \$241,034
- So, how can a recent graduate making a lower salary, and trying to pay for rent, etc. pay the school debt and also make contributions to the 401(k) plan???

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Along Comes Abbott Laboratories

- Abbott Labs developed a program based on the idea that so long as an employee can prove that they are making a certain amount of student loan repayments, they would be entitled to receive a nonelective contribution
- Abbott Labs filed for a Private Letter Ruling in 2017 regarding this proposed student loan program
- On May 22, 2018, the IRS issued PLR 201833012 outlining the legality of this program
 - Specifically, the IRS found that the SLP established by Abbott Labs did not violate the contingent benefit rule because of the following factors:
 - the nonelective contribution was not conditioned on the employee making, or not making, Elective Deferrals;
 - an employee was given the ability to make Elective Deferrals to the retirement plan, in addition to their student loan repayments, and could receive the employer matching contributions also available under the Abbott Labs plan; and
 - Abbott Labs did not extend any student loans to employees that will be eligible for the program



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Along Comes Abbott Laboratories (cont.)

- The Abbott Labs SLP nonelective contribution was provided only to NHCEs
- All retirement plan contributions are required to satisfy the coverage requirements under Code Section 410(b) to ensure that no benefits are being funded on a nondiscriminatory basis
- By default, if only NHCEs qualify for the SLP nonelective contribution, it is deemed to pass coverage testing
- This PLR restricted the options for a SLP to only nonelective contributions, and not matching contributions
 - Plus, a PLR is only 'good' for the entity to which it is issued, so there was technically no reliance for other plan sponsors



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SECURE 2.0 CHANGES THE GAME



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Introducing Qualified Student Loan Programs

- SECURE 2.0 Section 110 modified IRC section 401(m)
 - Applies to 401(k), 403(b), and Governmental 457 plans and SIMPLE IRA arrangements
 - Created the term Qualified Student Loan Payments (“QSLP”)
- SECURE 2.0 only gave us the basics:
 - Effective for plan years starting January 1, 2024
 - Without guidance, plans couldn’t implement this provision during this past year



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Introducing Qualified Student Loan Programs (cont.)

- SECURE 2.0 only gave us the basics:
 - Loan repayments incurred on behalf of employee for qualified higher education expenses
 - Carrying at least half-time full student load
 - Can’t exceed 402(g) limit minus elective deferrals
 - Employee must annually certify payment made on loan
 - Employer may rely on certification
 - Matching must be done at the same rate, and vesting, as normal match
 - Eligibility limited to employees otherwise eligible to receive match



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WHAT IS A QSLP?



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Notice 2024-63

- IRS issued Notice 2024-63 (the “Notice”) on August 19, 2024, providing guidance on the new QSLP option
 - Guidance in the Notice applies to 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 SECURE section 110
 - Structured in a Q&A format, most basic answers were given, but there are still questions to be answered
 - Comments are due to the IRS by October 18, 2024



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What is a QSLP?

- A QSLP is a payment made during the plan year by an employee in repayment of a qualified education loan (“QEL”)
 - A QEL, as defined in Code section 221, is indebtedness incurred solely to pay qualified higher education expenses for the:
 - Participant
 - Participant’s spouse
 - Participant’s dependents; and
 - which expenses are paid or incurred within a reasonable time before or after the loan is taken; and
 - Which are attributable to education furnished during a period during which the recipient was an eligible student



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Who Counts as a Dependent?

- The term “dependent” may have the meaning given such term by section 152
 - Includes a Qualifying Child who bears a relationship to the taxpayer; and
 - Has the same principal place of abode for more than ½ the year; and
 - Meets the age requirement (student under age 24); and
 - Who doesn’t provide over ½ of their own financial support; and
 - Hasn’t filed a joint return with their spouse



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Who Counts as a Dependent? (cont.)

- What happens if 2 or more taxpayers can claim the Dependent?
 - Must be parents to the dependent
 - Parent with whom the child resides for the longest period of time; or
 - If the parents have equal time, then the parent with the highest adjusted gross income claims
- Relationship can also include brother/sister, stepbrother/sister, of the taxpayer or descendent of any such relative
- Dependent can also be a Qualifying Relative



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What Doesn't Count as QEL?

- QEL excludes:
 - Any loan given by a relative to the student
 - Participant loans taken from a retirement plan
- Qualified Higher Education Expenses (defined in § 221) only include:
 - Tuition
 - Fees
 - Books and supplies
 - Room and board
 - NOTE: this gets reduced by any scholarship or allowance received



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Other QSLP Requirements

- The participant must be legally obligated to make loan payments and must actually make those payments to qualify for the QSLP match
 - In the words of the Notice, the participant must have "incurred" the loan
 - Includes borrower and a cosigner, but not a guarantor, unless the primary borrower has defaulted on the loan
- Regardless of who received the education, only payments made by the participant qualify as QSLPs



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UNDERSTANDING QSLP MATCHING RULES




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Calculating the Match on QSLP


- The maximum QSLP eligible for matching is the loan payment the participant actually made during the plan year, up to the maximum deferral limits
 - Also limited by the participant's total compensation from the employer, if less
- NOTE: The statute only mentions catch-up contributions in relation to the SIMPLE deferral limit, but we hope a technical corrections bill will remedy this issue






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Calculating the Match on QSLP (cont.)

- The QSLP limit is then reduced by any elective deferrals actually made to the plan by the participants
- Example:
 - Andrea has compensation of \$50,000
 - She also makes \$15,000 in QSLPs
 - Her maximum QSLP for plan purposes is then \$15,000



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Calculating the Match on QSLP (cont.)

- Example:
 - Andrea has compensation of \$50,000
 - She also makes **\$25,000** in QSLPs
 - The deferral limit under 402(g) is \$23,000 for 2024
 - Her maximum QSLP for plan purposes is then \$23,000 (the deferral limit since it is less than the QSLP)



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Calculating the Match on QSLP (cont.)

- Example:
 - Andrea has compensation of \$50,000
 - She also makes \$25,000 in QSLPs
 - **Andrea also makes \$5,000 of deferral contributions**
 - The deferral limit under 402(g) is \$23,000 for 2024
 - Her maximum QSLP for plan purposes is then \$18,000



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Calculating the Match on QSLP (cont.)

- NOTE: the Notice doesn't address how a plan using a non-calendar plan year applies the maximum deferral limit
 - The conservative approach is to use the limit in effect at the beginning of the plan year
 - Only QSLPs made during the plan year are eligible for matching contributions



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Meeting Nondiscrimination Requirements

- Rules for matching contributions must be uniform between QSLPs and elective deferrals
 - QSLPs must be matched at the same rate as deferral contributions
 - QSLP matching cannot have different vesting schedules
 - All employees must have equal opportunity to get QSLP matches
 - There may be an exclusion for union employees or vice versa
 - The plan cannot have different eligibility provisions for QSLP matches
 - Cannot have different allocation restrictions (i.e., 1000 hours/last day) for QSLP matches



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Meeting Nondiscrimination Requirements (cont.)

- The plan may not restrict the QSLP match to certain types of loans or educational programs
 - Example: The Plan will match all QSLPs except for ones resulting from a UCLA education
- The plan cannot limit QSLPs to loans for just the employee's education and exclude loans for spouse/dependent education



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Other Nondiscrimination Rules

- QSLP matches will not be subject to benefits, rights, and features testing
 - Requirement that QSLP match is available to all employees
- QSLP match may be funded on a different frequency than for regular deferral match
 - Example: The plan may provide for a per payroll period match with regular deferrals, but an annual contribution for the QSLP match
 - What if the match is discretionary and funded per payroll, then the employer changes the formula mid-year, how would you calculate the QSLP match at year-end?



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Plan Procedures for Matching Contributions

- Procedures must be reasonable based on facts and circumstances
- Participants will need to notify plan sponsors of the intent to make a QSLP match claim
 - Timing must be no later 3 months following the end of the plan year
 - But, what about the fact that ADP/ACP refunds need to be processed by 2 ½ months after the end of the plan year to avoid excise taxes?
 - Details about how to test will come later



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Plan Procedures for Matching Contributions (cont.)

- Language in the Notice stated that the 3 months “is an example” of a reasonable deadline
 - Will 30-days still be considered a reasonable deadline by the IRS?
 - IRS asked for comments – now’s your chance!
- If the Plan provides for an EACA, the six-month correction window for the ACP test will fit in nicely with this optional provision



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EMPLOYEE CERTIFICATION FOR QSLP



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Employee Certification

- Employee Certification must include:
 - Amount of the QSLP(s)
 - Date on which the QSLP(s) were made
 - Confirmation the payment was made by the participant
 - Confirmation that the loan being repaid is a QEL that was used to pay for qualified higher education expenses of the participant or the participant's spouse or dependent
 - A statement that the loan was incurred by the participant
- The last 2 must be affirmatively certified, but there are other ways for the employee to validate the first 3 items



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Employee Certification (cont.)

- The employee will need to certify to the employer that the loan payment is a QSLP
 - Language in the Notice allows for the employer to require each payment to be certified or an annual certification
- At a minimum, the employee must certify the first 3 items annually, but the employer can require a full certification of all 5 items annually
 - Alternate ways for the certification process are possible



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Certification Alternate #1

- The Employee can register the loan with the employer
 - Repayments can be taken from payroll and the employer will submit the payments
 - This alternate would count as the certification of the first 3 requirements
 - The last 2 requirements must still be affirmatively certified by the employee before the payment can be set up



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Certification Alternate #2

- The employee could instead register the loan with a third-party service provider
 - The last 2 certification items are satisfied with the certification
 - The QEL lender provides information about certification items 1 & 2 to the third-party service provider
 - The third-party notifies the employee that the employer assumes item 3 is met, and provides an opportunity to correct items 1 – 3
 - If no corrections are made, then items 1 – 3 are treated as satisfied through passive certification



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ADP TESTING MAGIC



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Testing QSLPs

- For most purposes, QSLP is not treated as a plan contribution
 - Not counted as deferral for ADP test
 - Not counted as deferral for 402(g) limit (but QSLPs limited by 402(g))
 - Not counted as annual addition for 415
- * But QSLP is treated as though it were a deferral for:
 - Calculating the match
 - Including safe harbor match



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General Testing Rules

- The plan may choose between testing options for performing the ADP test:
 - Apply a separate ADP test for employees who receive the QSLP match and a separate ADP test for employees who do not receive the QSLP match
 - Two methods are available for this option
 - Perform a single ADP test for all employees
- Provides testing flexibility
- Theoretically, the different proportions of HCE and NHCEs would have less of an impact under one or more of the Methods



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Separate Testing Method 1

- Separate testing group includes all employees who receive QSLP matches
 - This is without regard to whether they also make elective deferrals
 - Those that receive QSLP matches and also make elective deferrals are included in this separate test, and excluded from the main ADP test
- Employees who do not receive QSLP matches are not included in this separate ADP test, but are instead taken into account under the main ADP test



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Testing Method 1 (cont.)

- Note that there are still 2 tests to be run
 - Test 1 = Separate test covering all employees receiving QSLP match
 - Includes elective deferrals for employees who receive both QSLP match and elective deferral matches
 - Test 2 = Main ADP test covering all employees who do NOT receive QSLP match
 - Excludes employees who receive QSLP matches
 - Would include employees who defer 0% and do not receive QSLP match



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Method 1 Example

- Mary receives a QSLP match on \$15,000 of loan payments
- Mary also makes elective deferrals of \$5,000
- Bobby only makes elective deferrals up to \$10,000
- The employer opts for testing Method 1
 - Mary will be included in the separate ADP test
 - In the separate ADP test, Mary's \$5,000 will be included
 - Bobby will NOT be in the separate ADP test
 - Bobby's \$10,000 will be included in the main ADP test



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Testing Method 2

- Main ADP Test will include:
 - Employees who do NOT receive QSLP matches
 - Employees who receive QSLP matches AND who also make elective deferrals
 - Elective deferrals will be included in the test
- Separate ADP will include:
 - Includes all employees who receive QSLP matches, but disregards their elective deferrals



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Method 2 Example



- Mary receives a QSLP match on \$15,000 of loan payments
- Mary also makes elective deferrals of \$5,000
- Bobby only makes elective deferrals up to \$10,000
- Carter only receives a QSLP match on \$8,000 of loan payments
- The employer opts for Testing Method 2
 - Main test will include Bobby's \$10,000 and Mary's \$5,000
 - Separate test will include Carter and Mary, but will not take Mary's deferrals into account



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Bottom Line Method 2




- By definition, Method 2 will show \$0 in elective deferrals for all participants in the "separate test"
 - Therefore the "separate test" will always pass
- The "main test" will be like the normal ADP test except that those employees who received QSLP matches and who did not make any elective deferrals will be excluded
 - Works well if the only people who receive QSLP matches and who didn't make elective deferrals are NHCEs
 - Excludes a set of NHCE "zeroes" from the ADP test

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Summary: ADP choices



- If you want to explore everything, you need to run 4 ADP tests
 - Regular ADP test including everyone
 - If this passes, no need to run the others
 - Method 1:
 - Separate test for all who receive QSLP matches
 - Main test for everyone else
 - Method 2:
 - ADP test excluding employees who:
 - Received QSLP matches and
 - Did not make any elective deferrals

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What to Choose?

- Method 1: should work best if the NHCEs who have QSLP matches generally higher rate of elective deferrals than the HCEs who have QSLP matches
- Method 2: should work best if the HCEs who have QSLP matches generally higher rate of deferral percentage than the NHCEs who receive the QSLP matches
- How will you know unless you run them all????

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OTHER TIDBITS

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Other Things You Need to Know

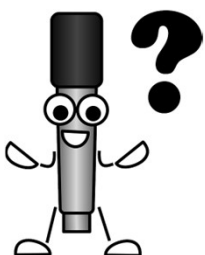
- Applying QSLP match rules to SIMPLE IRA plans
 - The rules outlined in the Notice apply to SIMPLE IRA plans, except there is no ADP testing
 - For example, certification process rules would apply
- Adding QSLP provision mid-year to a safe harbor plan is permitted
 - Override to Notice 2016-16, Section III.D

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Other Things You Need to Know (cont.)

- If an employee submits an incorrect certification, and the employer finds out, the match does not need to be corrected
- For example, student loan is forgiven and QSLP is refunded
 - The employer may choose to correct an incorrect QSLP match provided that all QSLP matches made under similar circumstances are corrected
- If there is a NQDC plan that is linked to a plan with a QSLP feature, the Notice outlines relief with respect to the election-timing and anti-acceleration rules of section 409A
 - Proposed regulations will be issued by the Treasury/IRS

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YOUR QUESTIONS



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