THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

ANDREW BANDUCCI
Senior Vice President, Retirement and Compensation Policy

Submitted Electronically

October 18, 2024

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-63)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: **Notice 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**

To Whom It May Concern:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to comment on Notice 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" (Notice), issued by the Department of the Treasury and the Internal Revenue Service (IRS) on August 20, 2024.[1] ERIC appreciates the guidance the IRS, the Department of the Treasury, and other regulators have provided in connection with the *SECURE 2.0 Act of 2022* (SECURE 2.0), including this Notice.

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district.

While ERIC strongly supported SECURE 2.0, we fully recognized that technical implementation would be challenging. In particular, many plan sponsors are enthusiastic about the possibility of programs providing employer matching contributions to retirement plans on account of qualified student loan payments (QSLPs). However, there were several unanswered questions about how Treasury and IRS would interpret the relevant statute, section 110 of SECURE 2.0. The Notice answers many of these questions, and ERIC members appreciate the guidance.

[1] The Notice is available at https://www.irs.gov/pub/irs-drop/n-24-63.pdf.

More specifically, ERIC and plan sponsors had requested clarification regarding several facets of section 110, such as operational flexibility regarding the "reasonable procedures" plan sponsors may establish under the statute for employees to claim the match; clarification about the process to be used to certify loan payments; and, permission to exclude employees under a collective bargaining agreement that does not provide for the student loan match. The Notice states that Treasury and IRS anticipate issuing proposed regulations with respect to section 110, and in our view, the contents of the Notice should be incorporated into those regulations. We also thank the Treasury and IRS for the ability of plan sponsors to rely on a good faith, reasonable interpretation of section 110 using the Notice.

ERIC Requests Proposed Regulations Include Model Amendments

Forthcoming proposed regulations should provide some additional details as well. For example, section 110(g) of SECURE 2.0 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.*[2]

The Notice addresses (1) and (2), but did not include model amendments which plans may adopt to implement QSLP matches. We urge IRS and Treasury to publish these model amendments – either as a follow-on notice or in the context of proposed regulations that the agencies have previewed. These model amendments should address each aspect that plans should address, including specifically, language in the plan that should be included about satisfying non-discrimination testing (as explained in the Notice) and model certification language that plan sponsors can use for employee certification of QSLPs. In particular, we ask that forthcoming regulations confirm that a plan sponsor has the flexibility to use either ADP test described in the Notice each year and could decide to use an alternative method if needed during plan year testing.

[2] Notice at 7.

ERIC Requests Additional Guidance Regarding Certification Requirements and IRS Coordination with the Department of Education

The Notice asked whether additional guidance would be helpful relating to passive certification or independent verification.[3] To satisfy the requirements of certifying a loan payment pursuant to Code section 401(m)(4)(d)(ii), the Notice states there are five elements of information that the plan must receive:

(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.[4] Any of these items can be satisfied through "affirmative certification" by the employee. Items (1), (2), and (3), may be satisfied either through independent verification by the employer or through "passive certification" by the employee.[5] Items (4) and (5) may only be satisfied by affirmative certification by the employee, such as through a registration process whereby the employee provides information to the plan before the first loan payment is made for which the employee claims a QSLP match.[6]

In this regard, Q&A B-2 of the Notice provides several examples, including an example of passive certification using a registration process with a third-party service provider where registration addresses elements (4) and (5) and the service provider receives information from a qualified education loan lender about elements (1) and (2). However, the loan provider is unable to provide information about the source of repayments to the service-provider; in that case, the third-party service provider should notify the employee of the information received about the amount and date of the loan payments and provide a statement to the employee that the employer assumes that (3) has been satisfied, providing a reasonable time to correct.[7]

Any future regulations should confirm that plan sponsors and administrators are permitted to receive information about the amount and date of loan payments either directly from the lender or from a third- party service provider. Some benefit plans engage these third-party service providers to provide holistic financial wellness tools to employees, including those with student loans. These tools provide, with the affirmative consent of the participant, the ability to link

[3] Notice at 25.
[4] Notice at 14.
[5] The Notice defined passive certification as "*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*." Notice at 15.
[6] Notice at 14-15.
[7] Notice at 16-17.

student loan information with the retirement plan recordkeeper's platform, permitting the participant to have more information and promoting better financial outcomes.

In this regard, we are concerned by a recent change by the Department of Education that has impacted the ability of third-party service providers to automatically link this information to a participant's account on a recordkeeper's website. As we understand it, the Department of Education, in interpreting the 2020 *Stop Student Debt Relief Scams (STOP)Act*, has recently required student loan servicers to prevent access to their data in the name of reducing fraud. This has had the effect of hindering third-party service providers, such as those contemplated in the Notice, from having the data access described in the Notice. We understand that an application process for trusted third parties may eventually be implemented, but as of now, it has not been. This has the potential both to reduce implementation of the matching programs envisioned by Section 110 of the bipartisan SECURE 2.0 Act and to result in worse financial outcomes for plan participants. It also adds to the burden for plan participants, as they will need to manually certify information that could be certified through the service-providers. We urge Treasury and IRS to coordinate with the Education Department, (a) to alert the Education Department of the implications of the potentially negative consequences of restricting access to bona fide third-party service providers; (b) to urge the Education Department to expeditiously establish a process to permit loan providers to coordinate with these third-party service providers.

ERIC Requests Additional Examples of Reasonable Procedures

The Notice asks whether additional examples of reasonable procedures would be helpful with respect to QSLP matches.[8] Section (C) of the Notice provides three questions and answers regarding the "reasonable procedures" that a plan is permitted to adopt to implement a QSLP match feature.[9] Under the Notice, a plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines (including quarterly deadlines) for claim submissions, provided that the deadlines are reasonable, which is a facts and circumstances test. A deadline that is three months after the end of the plan year is specifically permitted.

Additional clarity about these deadlines would be helpful. For example, IRS should confirm that a deadline within the first month after the plan year ends is reasonable. Also, IRS should specify the permissible timeframe for quarterly deadlines, as well as the deadline for contributions made on behalf of terminated employees. These could be addressed in additional examples. ERIC urges that plans be given maximum flexibility in order to facilitate operation of these programs. IRS should also provide additional guidance on reasonable procedures for employees who terminate employment before plan year-end. For example, plans with an annual certification deadline should be able to apply a separate certification deadline for these employees, such as one month after employment termination.

[8] Notice at 26.
[9] Notice at 18-20.

ERIC Requests Confirmation that Certain Year-end Contributions Are Permissible

The Notice provides guidance and examples of permissible eligibility conditions that plans may impose on QSLP matches. In one such provided example, a plan imposes a requirement that employees must remain employed through the QSLP match allocation date or the through the last day of the plan year, but that condition is not included for the plan's match on elective deferrals. The Notice says that this is impermissible. We request that the forthcoming proposed regulations confirm that a separate year-end contribution that "trues up" all matching contributions can still have a year-end employment requirement, so long as that requirement is applied consistently to all participating employees.

Conclusion

Thank you for the very helpful guidance contained in the Notice and for the opportunity to submit comments. We look forward to discussing these issues with you.

Sincerely,

Andrew Banducci