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SECURE 2.0 STUDENT LOAN MATCH

HELPING EMPLOYEES INCREASE THEIR RETIREMENT SAVINGS WHILE THEY PAY THEIR STUDENT LOANS

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AVIBEN

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Disclaimer and Updates

This white paper does not constitute legal advice, and readers should consult with their legal counsel as appropriate. The current version of this white paper is available on the Student Loan Match page on the Aviben website.

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INTRODUCTION

Much has been written about various provisions of the SECURE 2.0 Act of 2022 ("SECURE 2.0"), but comparatively little attention has been given to the student loan match provisions of the law. Further, many of the available resources on the topic focus exclusively on either legal requirements or operational concerns, with few addressing the breadth of issues that employers, third-party administrators, benefit brokers, attorneys, and consultants need to consider. Finally, many resources pre-date the IRS's August 2024 interim guidance that answered many questions about program design and administration. This white paper is intended to fill this void and provide a holistic guide to the implementation of student loan match programs.

STUDENT LOAN ENVIRONMENT

Currently there is approximately $1.75 trillion in total student loan debt in the United States, 92% of which is federal student loan debt and 8% of which is private student loan debt. More than 50% of students attending four-year colleges (whether public or private) have student loans, and student loan borrowers nationwide have an average outstanding loan balance of $28,950.[1]

Federal student loan data indicates that student loans are a concern for individuals of all ages, with the 35-49 age group having significantly more outstanding federal student loan debt than the 25-34 age group but with slightly fewer borrowers. Even those age 62 and older account for $121.5 billion in student loan debt. The student loan crisis is not limited to those early in their careers.

Federal Student Loan Portfolio (Q4 2024)[2]

Age Group	Number of Borrowers	Loans Outstanding
<25	6.8 Million	$96.3 Billion
25-34	14.7 Million	$487.3 Billion
35-49	14.6 Million	$646.6 Billion
50-61	6.2 Million	$290.1 Billion
62+	2.8 Million	$121.5 Billion

Not surprisingly, student loan debt has a negative impact on employees' retirement savings. In a 2019 study sponsored by TIAA, the MIT AgeLab found that 84% of student loan borrowers report that their student loans negatively impact the amount they save for retirement and that 26% of those who are not saving anything for retirement attribute their non-participation to their need to pay off their student loan debt.[3] Similarly, a recent Employee Benefit Research Institute study found that employees with student loans contributed less to their employer-sponsored retirement plans and had lower retirement plan balances than did employees without student loans. The study authors concluded that the student loan match provisions of SECURE 2.0 "would help participants who aren't contributing at the full match level or at all . . . at least receive the matching contributions to allow them to build up assets for retirement while they are addressing the expenses of student loan payments, which can have a considerable impact on participants' day-to-day expenses."[4]

It is not surprising that employers are seeking to address employee student loan debt and lack of retirement savings for recruitment and retention purposes, and SECURE 2.0 provides an effective tool for doing so.

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[1] Alicia Hahn, 2024 Student Loan Debt Statistics: Average Student Loan Debt, *Forbes Advisor* (Apr. 18, 2024).
[2] U.S. Department of Education Federal Student Aid, Federal Student Loan Portfolio by Borrower Age (2024).
[3] TIAA & MIT AgeLab, Understanding the Multigenerational Impact of Student Loan Debt on Family, Finances and Relationships (2019).
[4] Craig Copeland, Michael Conrath, Sharon Carson, & Alex Nobile, Student Loans and Retirement Preparedness, *EBRI Issue Brief*, No. 601 (Feb. 8, 2024).

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SECURE 2.0 AND IRS INTERIM GUIDANCE

Enacted as part of the December 2022 omnibus spending bill, SECURE 2.0 built on the SECURE Act of 2019 with dozens of new retirement-related provisions.[5] Through the amendment of four sections of the Internal Revenue Code—Section 401(m), Section 403(b), Section 408(p), and Section 457(b)—Section 110 of SECURE 2.0 permits employers to provide matching employer contributions based on employees' qualified student loan payments (often referred to as "QSLPs").[6]

SECURE 2.0 amended the preexisting definition of "matching contribution" ("employer contribution[s] made to a defined contribution plan on behalf of an employee on account of an employee contribution . . . [or] on account of an employee's elective deferral"[7]) to also include "any employer contribution made to a defined contribution plan on behalf of an employee *on account of a qualified student loan payment*."[8]

SECURE 2.0 left many questions unanswered, and employers and retirement plan sponsors were initially hesitant to begin providing employer matches based on QSLPs. On January 22, 2024, the American Retirement Association (ARA) submitted a letter to the IRS raising certain "questions regarding the technical meanings of various provisions in Section 110" and encouraging the IRS "to permit flexibility in program structure [that] will remove barriers to adoption of QSLP programs and allow employers to help their employees save for retirement while meeting student loan obligations."[9]

On August 19, 2024, the IRS issued interim student loan match guidance the addressed many of these concerns. The guidance noted that "[t]he Treasury Department and the IRS anticipate issuing proposed regulations with respect to [the student loan match provisions of SECURE 2.0] and, accordingly, invite comments and suggestions."[10] The student loan match provisions of SECURE 2.0 and the IRS's interim guidance are addressed in detail below.

GENERAL

Prior to the enactment of SECURE 2.0, employers wishing to make matching contributions to employee retirement plans could only make matching contributions based on the employees' own contributions. But many employees are unable to contribute due to their student loan obligations. Under SECURE 2.0, employers are permitted to allow QSLPs—rather than simply employee contributions—to be the basis for an employer's matching contributions to a retirement plan.[11] "Technically speaking, the loan payments are treated as 'deemed' elective deferrals."[12] The student loan match is available for plan years beginning on or

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[5] SECURE 2.0 Act of 2022, Pub. L. No. 117-328, Div. T (Dec. 29, 2022) ("SECURE 2.0").
[6] *Id.* § 110.
[7] 26 U.S.C. § 401(m)(4)(A)(i)-(ii).
[8] SECURE 2.0 § 110(a) (codified at 26 U.S.C. § 401(m)(4)(A)(iii)) (emphasis added).
[9] American Retirement Association, Letter RE: Implementation of Section 110 of SECURE 2.0 (Jan. 22, 2024) ("ARA Letter").
[10] Internal Revenue Service, 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 (Aug. 19, 2024) ("Notice 2024-63").
[11] SECURE 2.0 § 110.
[12] Mark Heisler, The Student Loan Payment Matching Contribution Up Close, *National Tax-Deferred Savings Association* (Sept. 21, 2023).

after January 1, 2024,[13] in 401(k), 403(b), SIMPLE IRA, and governmental 457(b) plans (but not non-governmental 457(b) plans).[14]

PLAN DESIGN BASICS

Under SECURE 2.0, a plan allowing for student loan matching must be structured so that:

- "[T]he plan provides matching contributions on account of elective deferrals at the same rate as contributions on account of [QSLPs]."
- The student loan match is only available to "employees otherwise eligible to receive matching contributions on account of elective deferrals," and "all employees eligible to receive matching contributions on account of elective deferrals are eligible to receive matching contributions on account of [QSLPs]."
- "[T]he plan provides that matching contributions on account of [QSLPs] vest in the same manner as matching contributions on account of elective deferrals."[15]

Timing is one area in which matching contributions on account of QSLPs can be treated differently than matching contributions on account of elective deferrals, as SECURE 2.0 provides that a plan may "make matching contributions for [QSLPs] . . . at a different frequency than matching contributions are otherwise made under the plan, provided that the frequency is not less than annually."[16]

In its interim guidance, the IRS explained that "employees may not be excluded from QSLP matches on an individual employer, business unit, division, location or other similar basis" but that "a plan may include a QSLP match feature that applies only to non-collectively bargained employees."[17] The IRS provided the following example:

> 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).[18]

Finally, the IRS noted that "[o]nly an employee's qualified education loan payments that were made during a plan year are eligible to be counted for purposes of the . . . QSLP match for that plan year."[19]

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[13] SECURE 2.0 § 110(h).
[14] *See id.* § 110; Notice 2024-63 § III.A-2.
[15] SECURE 2.0 § 110(c) (codified at 26 U.S.C. § 401(m)(13)(A)).
[16] *Id.* § 110(g).
[17] Notice 2024-63 § III.A-5.
[18] *Id.*
[19] *Id.* § III.A-6.

QUALIFYING PAYMENTS

SECURE 2.0 defines "qualified student loan payment" as "a payment made by an employee in repayment of a qualified education loan . . . incurred by the employee to pay qualified higher education expenses, but only . . . if the employee certifies annually to the employer making the matching contribution under this paragraph that such payment has been made."[20] (The certification requirements are described below.)

SECURE 2.0 incorporates the 26 U.S.C. § 221 (the student loan interest deduction statute) definition of "qualified education loan" as "any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses" meeting three requirements:

- The expenses are "incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred."
- The expenses "are paid or incurred within a reasonable period of time before or after the indebtedness is incurred."
- The expenses "are attributable to education furnished during a period during which the recipient was an eligible student."[21]

Following the passage of SECURE 2.0, there was debate within the industry over how to interpret the requirement that a loan on behalf of an employee's spouse or dependent be "incurred by" the employee. In its interim guidance, the IRS clarified that "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." The IRS noted that "a cosigner has a legal obligation to make payments" but that "a guarantor" does not have such a legal obligation "unless the primary borrower defaults."[22] Therefore, student loan payments by an employee on a cosigned loan for a spouse or dependent would generally qualify as QSLPs, but student loan payments by an employee on a guaranteed loan for a spouse or dependent would generally not qualify (unless the primary borrower defaulted and the employee became obligated on the loan). Under no circumstance would payments made by an employee as a gift to another person qualify as QSLPs.

Section 221(d)(1) also provides that the term "qualified education loan" "includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan" (so refinanced student loans would qualify) but does "not include any indebtedness owed to a person who is related . . . to the taxpayer" (so private loans between family members would not qualify).[23] In its interim guidance, the IRS emphasized that a plan may not "limit QSLP matches to only certain qualified education loans, such as [those] for an employee's own education, for a particular degree program . . . , or for attendance at a particular school."[24] Accordingly, an employer is not permitted to exclude spouse or dependent loans incurred by the employee or to limit the student loan match to educational programs related to the employee's role with the employer.

For 401(k), 403(b), and governmental 457(b) plans, SECURE 2.0 limits QSLPs to the lesser of the elective deferral limit under 26 U.S.C. § 402(g) ($23,500 for 2025) and the employee's compensation for the year,

[20] SECURE 2.0 § 110(b) (codified at 26 U.S.C. § 401(m)(4)(D)).
[21] 26 U.S.C. § 221(d)(1).
[22] Notice 2024-63 § III.A-1.
[23] 26 U.S.C. § 221(d)(1).
[24] Notice 2024-63 § III.A-4.

reduced by the employee's elective or salary deferrals for the year.[25] For SIMPLE IRA plans, QSLPs are limited to the lesser of the SIMPLE IRA threshold under 26 U.S.C. § 408(p)(2)(E) ($16,500 for 2025) after application of Section 414(v) (providing for catch-up contributions) and the employee's compensation for the year, reduced by any other elective employer contributions for the year.[26]

QUALIFYING INSTITUTIONS AND EXPENSES

SECURE 2.0 defines "qualified higher education expenses" as "the cost of attendance . . . at an eligible educational institution."[27] SECURE 2.0 defines "eligible educational institution" by reference to 26 U.S.C. § 221(d)(2), which in turn incorporates the definition of the term in 26 U.S.C. § 25A(f)(2) but adds "an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training."[28] The IRS summarizes the definition of "eligible educational institution" as "a school offering higher education beyond high school. It is any college, university, trade school, or other post-secondary educational institution eligible to participate in a student aid program run by the U.S. Department of Education. This includes most accredited public, nonprofit and privately-owned–for-profit postsecondary institutions."[29] In short, most post-secondary programs and certain internship and residency programs qualify.

The statutory definition of "cost of attendance" is the same definition used for purposes of the student loan interest deduction and includes, among other things, tuition, fees, required equipment, books, supplies, transportation, miscellaneous personal expenses, and room and board.[30]

CLAIM DEADLINES

SECURE 2.0 requires the Treasury Department to issue regulations "permitting employers to establish reasonable procedures to claim matching contributions for such qualified student loan payments under the plan, including an annual deadline (not earlier than 3 months after the close of each plan year) by which a claim must be made."[31]

The ARA noted that this "reference to an annual deadline that is at least three months after the end of the plan year . . . created significant questions and hesitancy in adoption of QSLP matching programs."[32] The IRS addressed these concerns in its interim guidance by emphasizing that the key requirement is reasonableness "based on all relevant facts and circumstances" and that an annual deadline that is three months after the end of a plan year is simply an example of a reasonable deadline. The IRS also stated that "[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."[33]

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[25] SECURE 2.0 § 110(b) (codified at 26 U.S.C. § 401(m)(4)(D)); Notice 2024-63 § III.A-3.
[26] SECURE 2.0 § 110(d) (codified at 26 U.S.C. § 408(p)(2)(F)); Notice 2024-63 § E-1.
[27] SECURE 2.0 § 110(b) (codified at 26 U.S.C. § 401(m)(4)(D)).
[28] 26 U.S.C. § 221(d)(2).
[29] Internal Revenue Service, What is an Eligible Educational Institution? (Jan. 13, 2025).
[30] SECURE 2.0 § 110(b) (codified at 26 U.S.C. § 401(m)(4)(D)) (referencing the Higher Education Act of 1965 § 472 (codified at 20 U.S.C. § 1087ll)).
[31] *Id.* § 110(g).
[32] ARA Letter at 3.
[33] Notice 2024-63 § III.C-2.

CERTIFICATION OF PAYMENTS

For purposes of employer matching, a significant difference between QSLPs and elective deferrals is the employer's ability to verify that the qualifying payment (in the case of a QSLP) or contribution (in the case of an elective deferral) has been made. Unlike matching based on elective deferrals, with student loan matching the employer's match is based on an action of the employee that the employer generally has no way to verify absent some action by the employee. SECURE 2.0 sought to address this issue by including within the definition of "qualified student loan payment" the requirement that "the employee certif[y] annually to the employer making the matching contribution . . . that such payment has been made on such loan."[34] Elsewhere, SECURE 2.0 provides that "[t]he employer may rely on an employee certification of payment"[35] and requires the Treasury Department to issue regulations "implementing the amendments made by this section, including regulations . . . permitting employers to establish reasonable procedures to claim matching contributions for such [QSLPs] under the plan, including an annual deadline (not earlier than 3 months after the close of each plan year) by which a claim must be made."[36]

This seemingly straightforward requirement generated a host of questions. As noted by the ARA in its letter to the IRS, SECURE 2.0 "does not specify what information must be attested to in the employee's certification." Further, the ARA recommended that "the IRS clarify that plans are permitted to require an employee provide documentation related to QSLPs and such independent evidence will be treated as a certification of the element it supports." The ARA noted that "[m]any employers do not want to rely exclusively upon employee certifications in matters related to retirement plan administration" and instead want "to require reasonable third-party evidence."[37]

In its interim guidance, the IRS generally provided the clarity and flexibility that employers and industry groups requested. Specifically, the IRS identified five "items of information [that] must be received by a plan" (or "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.[38]

The IRS noted that "any required item of information may be satisfied through affirmative certification by the employee." The IRS also explained that items 4 and 5 above "can be certified only through affirmative certification by the employee" but that a permissible affirmative certification method includes "loan registration whereby an employee provides information to the plan . . . before the first loan payment is made for which the employee claims a QSLP match."[39]

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[34] SECURE 2.0 § 110(b) (codified at 26 U.S.C. § 401(m)(4)(D)(ii)).
[35] *Id.* § 110(c) (codified at 26 U.S.C. § 401(m)(13)(C)).
[36] *Id.* § 110(g).
[37] ARA Letter at 5-6.
[38] Notice 2024-63 § III.B-2.
[39] *Id.*

The IRS explained that as an alternative to affirmative certification, items 1-3 above (the payment amount, the payment date, and confirmation that the employee is the payor) may be satisfied through "independent verification by the employer" or "passive certification by the employee." According to the IRS, "independent verification means a method of certification by which a plan is able to validate the accuracy of items (1), (2), and (3)," such as "through payroll deduction."[40]

The "passive certification" approach as described by the IRS involves (a) "an employee provid[ing] written information about a qualified education loan to a plan regarding items (4) and (5)"; (b) the lender providing the plan "information about items (1) and (2)"; (c) "the plan notif[ying] 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 (d) the plan providing the employee "a reasonable period to correct the information included in the employee notice." Under this approach, "[t]he employer does not have an obligation to inquire whether item (3) has been satisfied" and "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."[41]

According to the IRS, information about items 1, 2, and 3 above "must be received annually by a plan" but information about items 4 and 5 does "not need to be received annually by a plan if the employee registers the loan with the plan." But the IRS noted that if a loan is refinanced or the information in items 4 or 5 changes in some way, updated information about items 4 and 5 "must be received by the plan" such as "through re-registration of the loan."[42]

Finally, the IRS stated that if a QSLP certification "is determined to be incorrect, a match based on that certification" is not required to be corrected but can be corrected if "all QSLP matches made under similar circumstances are corrected." The example that the IRS provided of a situation in which the plan has the option of not correcting an incorrect certification involved "the qualified education loan on which the QSLP match was based [being] later forgiven (causing the employee's certification of a QSLP to be incorrect)." The IRS explained that "[t]he option not to correct an employee's QSLP match based on an incorrect certification . . . 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."[43] Based on this language, it appears that the option not to correct a match based on an incorrect certification is limited to situations in which a subsequent event causes the certification to be incorrect and does not apply to situations involving non-compliance with the certification requirement at the time the certification is submitted (such as if one or more of the five required items of information is not properly certified).

The following chart summarizes the five items that must be certified, the required certification frequency for each item, and the means available for certifying each item:

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[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.* § III.E-4.

Certification Items[44]	
Item to Certify and Frequency	**Available Means of Certification**
Loan payment amount *Required at least annually*	• Affirmative certification by employee • Independent verification by employer (e.g., payroll deduction, etc.) • Passive certification by employee (lender informs the plan, plan notifies the employee of the information, and employee is given a reasonable time to correct the information)
Loan payment date *Required at least annually*	• Affirmative certification by employee • Independent verification by employer (e.g., payroll deduction, etc.) • Passive certification by employee (lender informs the plan, plan notifies the employee of the information, and employee is given a reasonable time to correct the information)
The employee made the loan payment *Required at least annually*	• Affirmative certification • Independent verification by employer (e.g., payroll deduction, etc.) • Passive certification by employee (notification to employee includes a statement that the employer assumes this item has been satisfied and employee is given a reasonable time to correct the information)
The loan is a qualified education loan used to pay for qualified higher education expenses of the employee, the employee's spouse, or the employee's dependent *Required at least annually unless loan is registered with the plan (but updates required when changes occur)*	• Affirmative certification • Loan registration (employee provides the plan information before the first loan payment is made for which a match is claimed)
The employee incurred the loan *Required at least annually unless loan is registered with the plan (but updates required when changes occur)*	• Affirmative certification • Loan registration (employee provides the plan information before the first loan payment is made for which a match is claimed)

[44] *Id.* §§ III.B-2, B-3.

CERTIFICATION MODELS

The IRS's interim guidance recognizes three models for certifying QSLPs—affirmative certification, payroll deduction, and payment verification. An employer considering the adoption of a student loan match program should determine which of these models it wishes to implement (including whether to offer only one model or to provide employees a choice of multiple models).

AFFIRMATIVE CERTIFICATION MODEL

The affirmative certification model is the most straightforward way to administer a student loan match program. Under this approach, the employer obtains a certification from an employee (likely following the end of the year for the prior year's student loan payments) and then processes a one-time matching contribution. (The employer could also choose to require the employee to register the loan before the first loan payment is made for which a match is claimed.) The IRS's interim guidance includes the following example of the affirmative certification model:

> 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.[45]

Under this model, the employer or third-party administrator provides employees certification forms (either electronically or hard copy), establishes a deadline for the submission of the forms, and then confirms that the forms are fully completed. (The employer also has the option of requiring supporting documentation.[46])

The primary advantage of this model is that it is relatively simple to understand and administer. However, there are several disadvantages. First, the employer has no way to verify the accuracy of the certifications (unless employees are required to submit supporting documentation). Second, although the model is simple in its design, the employer or third-party administrator is required to distribute and collect certification forms. Third, the certification process is distinct from the payroll process, and employees receiving an annual match following submission of a certification form will not grow accustomed to seeing ongoing matches reflected in their pay and retirement account statements (and thus may be less likely to begin making their own contributions when they are able to do so). Finally, annual matches do not offer the dollar-cost averaging benefits of regular, ongoing matches.

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[45] *Id.* § III.B-2.
[46] *Id.* § III.C-3.

PAYROLL DEDUCTION MODEL

The payroll deduction model is a more automated way to administer a student loan match program. Under this approach, the employee registers the loan with the employer (certifying items 4 and 5 and providing the employer loan details) and completes a salary reduction agreement authorizing the employer to withhold the loan payments from the employee's pay and make the loan payments on the employee's behalf. The employer then withholds the loan payments, remits them directly to the student loan servicer, and provides an ongoing retirement plan match for each payment. For a streamlined process, the employer or third-party administrator should automate the process of remitting payments to the various student loan servicers. The IRS's interim guidance includes the following example of the payroll deduction model:

> 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.[47]

There are a number of advantages of this model. First, the employer is able to verify that the student loan payments are actually made because the employer is remitting the payments directly to the student loan servicer. Second, there is no need to distribute and collect certification forms from employees, as the employee registers the loan at the outset and then the remaining certification elements—payment amount, payment date, and that the employee made the payment—are necessarily verified through the payroll deduction process. Finally, the ongoing match feature allows employees to grow accustomed to seeing ongoing matches reflected in their pay and retirement account statements (which may make them more likely to begin making their own contributions when they are able to do so) and allows them to benefit from dollar-cost averaging. The primary disadvantage of this model is the need to establish an automated means of remitting payments to the various student loan servicers, but a third-party administrator may be able to offer this service at a modest cost. Further, some employees may be reluctant to relinquish responsibility for making their student loan payments (though others may welcome the opportunity to have their student loan payments taken directly out of their paychecks).

PAYMENT VERIFICATION MODEL

The payment verification model has a number of advantages, but legal and logistical hurdles prevent it from being widely adopted. Under this model, an employee registers the loan, a third-party service provider verifies the date and amount of each loan payment, and the employee is provided a notice stating that the employer assumes that the loan payment was made by the employee but that the employee must notify the employer if that is not correct. If the employer does not receive a correction from the employee, the employer is permitted to assume that the employee made the loan payment. The IRS's interim guidance includes the following example of the payment verification model:

> 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

[47] *Id.* § III.B-2.

> (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.[48]

The payment verification model enables an employer to verify that the student loan payments were made and avoids the need for an end-of-year certification. But it does require the employer, the third-party administrator, or a contracted service provider to send the employee notices, and the "reasonable period" that the employee must be given to correct the employer's assumption that the employee is the payor could prevent the employer from making matching contributions on a regular basis.

Ultimately, the biggest impediment to the adoption of the payment verification model appears to be the ability of service providers to obtain payment information about federal student loans. Companies working in this area have reported that the U.S. Department of Education's Federal Student Aid office has stopped allowing third parties to access student loan payment data due to the restrictions of the STOP Act.[49] Therefore, at least for the time being, the payment verification model does not appear to be a viable option.

IMPLEMENTATION

An employer interested in implementing a student loan match should take the following actions:

- Review this white paper and ensure that the employer understands the requirements and available models of a student loan match program.
- Consult with the employer's third-party administrator and/or benefit consultants to assess if they have the forms and systems necessary to facilitate a student loan matching program.
- If the employer decides to implement a student loan match, provide notice to employees and any bargaining units of the new benefit. (A memorandum of understanding or collective bargaining agreement amendment may be necessary for unionized workforces, so employers should consult with labor counsel as needed.)
- Assemble the necessary forms depending on the model chosen (e.g., loan registration form, certification form, salary reduction agreement, etc.) and educate employees on the student loan match.
- Amend the applicable retirement plan documents by the relevant deadlines.[50]

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[48] *Id.*

[49] *See* Stop Student Debt Relief Scams Act of 2019 (STOP Act), Pub. L. No. 116-251; 134 Stat. 1129 (Dec. 22, 2020).

[50] The SECURE 2.0 amendment deadlines are (a) December 31, 2026, for plans that are not governmental or collectively bargained plans; (b) December 31, 2028, for collectively bargained plans; and (c) December 31, 2029, for governmental plans (including public school plans). Internal Revenue Service, Miscellaneous Changes Under the SECURE 2.0 Act of 2022, Notice 2024-2 (Jan. 8, 2024).

AVIBEN'S STUDENT LOAN MATCH SOLUTION

As a third-party administrator of employee benefits, Aviben administers 403(b) and 457(b) plans, student loan match programs, health reimbursement arrangements (HRAs), health savings accounts (HSAs), Section 125 cafeteria plans, and COBRA benefits. Although Aviben serves all employer types, it has particular expertise working with public sector employers such as school districts, cities, and counties. Using its proprietary 403(b) administration software, Aviben administers the 403(b) plans for most Minnesota school districts.

Aviben provides employers two models for implementing a student loan match—the affirmative certification model and the payroll deduction model—and an employer can choose to offer its employees one or both models.

- With the affirmative certification model, Aviben either (a) provides the employer the necessary certification forms to distribute, collect, and process or (b) accepts online certifications directly from employees and compiles the relevant data for the employer to enter into its payroll software, avoiding the need for the employer to distribute, collect, and process forms.
- With the payroll deduction model, the employee registers the student loan via a student loan addendum to the employee's salary reduction agreement and Aviben remits the payments directly to the employee's student loan servicer. (Aviben has established an automated payment system with all of the federal student loan servicers and most of the larger private student loan servicers to ensure that the remittance process is fast and effective.) The employer is then able to provide an ongoing monthly match based on the QSLPs, and there are no end-of-year certification forms to complete.

CONCLUSION

The student loan match provisions of SECURE 2.0 represent a win-win for employers and employees. Employees who struggle to save for retirement while simultaneously paying their student loans get the benefit of a retirement plan match based on their student loan payments, and employers have a new recruitment and retention tool that they can incorporate into their existing employee retirement plan. But the widespread adoption of student loan match programs requires a shared understanding by employers, third-party administrators, benefit brokers, attorneys, and consultants of the applicable legal requirements and operational considerations. Aviben has expertise in SECURE 2.0 student loan match programs and offers an innovative and cost-effective student loan match administration solution. Please contact Aviben with any questions.

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