SECURE 2.0 Opens the Door on Retirement Match Based on Student Loan Payments

Employee Benefits & Executive Compensation Blog on **February 17, 2023**

The grab bag of retirement provisions in the SECURE 2.0 legislation that was enacted at the end of 2022 included an expansion of the ability for a section 401(k) or 403(b) plan, or a governmental section 457(b) plan, to provide matching contributions on participants' student loan payments. Effective for plan years starting after December 31, 2023, the change can help employees who might otherwise forgo matching contributions to pay off student debt.

Prior to SECURE 2.0, IRS guidance allowed employers to make contributions to a section 401(k) plan on account of student loan payments, but participating employees had to opt out of the regular match and the contributions had to be treated as "non-elective" contributions. This meant that the student loan benefit could not be offered under a safe harbor plan and employees receiving the student loan contribution had to be counted as zeroes for nondiscrimination testing of the regular 401(k) match. These requirements made the benefit unattractive for many employers. SECURE 2.0 solves that problem by allowing qualified student loan payments to be treated like elective deferrals for purposes of a plan's matching contribution provisions.

The statute specifies the following conditions for employer matching contributions based on qualified student loan payments:

- The student loan payment must be made by an employee to repay a qualified education loan that the employee incurred to pay for qualified higher education expenses (i.e., the cost of attendance at an eligible education institution). Unlike the student loan benefit under section 127 of the Internal Revenue Code (the "Code"), the SECURE 2.0 rule does not specify that the loan be for the employee's own education. Although not entirely clear, this suggests that a match could be provided on repayments of loans taken by an employee for the education of the employee's child or grandchild.

- All employees who are eligible for the plan's regular match must also be eligible for the match on qualified student loan payments, and vice versa.
- The rate of match on qualified student loan payments must be the same as the rate of match on elective deferrals.
- The vesting rules for the match on qualified student loan payments must be the same as for matching contributions on elective deferrals.
- Matched student loan payments count toward the limit on elective deferrals under section 402(g) of the Code (the "Elective Deferral Limit"). Employees may choose to make elective deferrals (pre-tax and/or Roth), qualified student loan payments, or a combination of both, as long as the combined total does not exceed the Elective Deferral Limit.

Procedural Options. The statute contemplates two types of procedural flexibility for the new match:

- The match on qualified student loan payments may be made at the same frequency as the match on elective deferrals or at a different frequency, as long as the match on qualified student loan payments is provided at least once per year.
- Employers may rely on employees' certification that eligible payments were made.

Although the new rules will allow qualified student loan payments to be treated as elective deferrals for matching purposes, they generally may not be treated as elective deferrals for other purposes. For example, qualified student loan payments will not be treated as elective deferrals for purposes of the average deferral percentage ("ADP") test. This means that employees who make student loan payments in lieu of elective deferrals would count as zeroes for purposes of the ADP test. However, the rules will allow separate testing for employees who receive the match on qualified student loan payments, and ADP testing still will not be required for safe harbor plans.

The statute directs the U.S. Treasury Department to issue implementing regulations that cover certain procedural requirements and to promulgate model plan amendments to implement the match on qualified student loan payments. We are hopeful that guidance will be issued sometime in 2023. Be on the lookout for updates.

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