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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: Student Loan Matching Contributions

Dear Sir or Madam:

The SPARK Institute, Inc. appreciates the opportunity to comment on Notice 2024-63, which provides preliminary guidance on the new Internal Revenue Code ("Code") provisions allowing employers to make matching contributions on account of an employee's qualified student loan payments ("QSLPs"), as added by Section 110 of the SECURE 2.0 Act of 2022 ("SECURE 2.0").

The SPARK Institute represents retirement plan recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms, and investment managers. Collectively, our member firms administer the retirement plans for over 110 million American workers.

Overall, the SPARK Institute was very pleased with the clarifications and flexibility that the Department of the Treasury ("Treasury") and Internal Revenue Service ("IRS") provided through Notice 2024-63. On a series of key issues, Notice 2024-63 favorably responded to the written guidance requests that the SPARK Institute shared with Treasury and IRS on April 10, 2023. For example, consistent with SPARK's requests, Notice 2024-63: (i) confirms that student loan cosigners are generally eligible to receive QSLP matches; (ii) provides flexibility in terms of when QSLP matches may be made, and (iii) clarifies that a plan may establish a QSLP match claims deadline that is earlier than three months after the close of the plan year. We believe that each of these clarifications will make it more likely for plans to offer, and employees to utilize, a QSLP match feature.

As Treasury and IRS continue to work on regulations implementing Section 110 of SECURE 2.0, we ask that you consider and address the following issues that have been identified by our members as needing additional guidance.

THE SPARK INSTITUTE'S GUIDANCE REQUESTS ON SECURE 2.0'S STUDENT LOAN RETIREMENT MATCH

A. ***Clear and Consistent Naming.*** During a recent student loan workshop hosted by the SPARK Institute, we heard concerns that plan participants are sometimes confused when they are informed about what Notice 2024-63 refers to as a "QSLP match feature." The problem is that when employees hear about a "qualified student loan payment match feature" or "student loan repayment program," they sometimes believe that their employer will match student loan payments by making a payment to reduce the participant's loan. To reduce this type of confusion, the SPARK Institute encourages Treasury and IRS to, in future guidance, refer to the feature codified in Section 110 of SECURE 2.0 as a Student Loan Retirement Match ("SLRM").

B. ***Extended Good Faith Relief.*** Notice 2024-63 states that its interpretations will apply for plan years beginning after December 31, 2024. In addition, for plan years beginning before 2025, plans may rely on a good faith, reasonable interpretation of Section 110 of SECURE 2.0. Notice 2024-63 also indicates that Treasury and IRS anticipate issuing regulations with respect to Section 110 of SECURE 2.0.

The SPARK Institute appreciates the prospective effective date included in Notice 2024-63, but we request that Treasury and IRS extend this good faith relief to apply no earlier than the applicability date contained in the forthcoming final regulations. Providing this additional flexibility is needed to account for any future guidance that may further clarify the issues discussed in Notice 2024-63. We believe that extended good faith relief would encourage more plans to adopt an SLRM feature.

C. ***Claims Window.*** The SPARK Institute appreciates the guidance indicating that a plan can establish an SLRM claims deadline that is earlier than three months after the close of the plan year.[1] On this issue, through future guidance, the SPARK Institute requests that Treasury and IRS expressly clarify that it would be reasonable for a plan to establish a claims deadline that ends on the last day of a plan year or, at the very least, that it would be reasonable to impose a claims deadline that is 30 days after the end of a plan year.

D. ***Eligible Loans.*** The SPARK Institute appreciates the guidance confirming that the repayment of loans incurred to cover the educational expenses of an employee's spouse or dependents may be treated as a QSLP. The SPARK Institute is, however, requesting additional guidance on the types of loan repayments that may be treated as QSLPs. For example, we request guidance clarifying what it means to be a "dependent" for this purpose. Is it a dependent within the meaning of Code section 152? Is it a dependent within the meaning of Code section 221(d)(4), which is a component of the definition for "qualified education loan"? Or, is it something else? Also, Treasury and IRS should clarify that a

[1] *See* Notice 2024-63, Q&A C-1 and Q&A C-2, n. 4 (explaining that a plan can have a deadline earlier than 2½ months after the end of a plan year and a plan can have multiple deadlines for a plan year, including quarterly deadlines).

repayment of a loan to cover the educational expenses of a spouse or dependent may be treated as a QSLP, provided that student was the employee's spouse or dependent when the loan was incurred or when the repayment was made.

E. ***Cosigners.*** The SPARK Institute appreciates the guidance confirming that cosigners are generally treated as having a legal obligation to make payments under the terms of a loan and, therefore, repayments of cosigned loans may be treated as QSLPs. We have, however, continued to receive some questions about what it means to have a "legal obligation" to make payments as a cosigner. The guidance makes a distinction between a "cosigner" and a "guarantor" which may not be obvious to the average parent, who may only know that they signed the loan when it was issued. It might be helpful to provide examples of typical student loans and whether they would qualify.

F. ***Annual v. Periodic Matching Formulas.*** Code section 401(m)(13)(A)(i) states that, in order for an employer contribution based on a QSLP to be treated as a "matching contribution," the plan must provide "matching contributions on account of elective deferrals at the same *rate* as contributions on account of qualified student loan payments" (emphasis added).

On this condition, the SPARK Institute requests express clarification that, provided any matching formula for elective deferrals applies at "the same rate" as any matching formula for QSLPs, elective deferral matches and SLRMs may be calculated over different periods of time. For example, if a plan offers a 100% match on elective deferrals of up to 5% of compensation, our requested clarification would allow the plan to apply this matching formula: (a) to QSLPs on an annual basis; and (b) to elective deferrals over a different time period – e.g., bi-weekly or monthly.

Some of our members have interpreted Notice 2024-63, Q&A E-3 as providing the necessary clarification on this issue because it states that "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." And while it appears that Treasury and IRS may have intended Q&A E-3 to favorably resolve this issue, uncertainty remains because Q&A E-3 expressly refers to when SLRMs may be contributed, rather than referring to the period of time that may be used to apply the SLRM formula.

We are concerned that, if Treasury and IRS do not provide our requested clarification, plans that currently calculate elective deferral matches more frequently than annually may be discouraged from adding an SLRM feature. This is because, for such plans, the addition of an SLRM feature would yield one of two undesirable results.

If, for example, such a plan is forced to calculate elective deferral matches and SLRMs consistently on an annual basis, the plan will effectively be required to provide a "true-up matching contribution," even if it currently does not provide for such contributions. Conversely, if a plan is forced to calculate elective deferral matches and SLRMs consistently over a time period that is more frequently than annually – e.g., biweekly – this will require

the plan to somehow allocate QSLPs throughout the year among those shorter time periods. This approach, however, would not necessarily align with how student loan repayments are typically made – i.e., on a monthly basis. Additionally, any rule that forces plans to allocate QSLPs over a time period that is shorter than the plan year will add significant complexity to any SLRM feature, and will likely require guidance from Treasury and IRS on how plans are permitted to assign QSLPs to particular weeks or payroll periods.

We believe that the statutory requirement for SLRMs to be calculated at the same "rate" as normal matching contributions simply means that the formula is the same. In fact, SECURE 2.0 anticipates that SLRMs will be calculated at the end of the year, and there is no evidence Congress intended to disrupt plans that do not make a true-up contribution for normal matching contributions.

G. ***Mid-Year Terminations.*** The SPARK Institute appreciates the guidance indicating that an SLRM feature may be added as a mid-year change to a safe-harbor plan. On a closely related issue, the SPARK Institute is requesting clarification on whether a plan, including a safe harbor plan, is permitted to terminate, reduce, or suspend an SLRM feature in the middle of a plan year. If so, are there any special considerations that apply? For example, assuming that a safe-harbor plan can eliminate an SLRM feature in the middle of a plan year, do the restrictions on mid-year reductions or suspensions of safe harbor contributions apply?[2]

H. ***Safe Harbor Notices.*** The SPARK Institute requests guidance and model language to help safe harbor plans update their safe harbor notices, including any mid-year safe harbor notices, in connection with an SLRM feature. In order to avoid any delays in implementing an SLRM feature, we also request confirmation that for any mid-year change to add an SLRM feature that covers QSLPs made at any point during the year, the updated safe harbor notice will be considered timely if it is provided as soon as practicable and no later than 30 days after the date the change is adopted, provided that participants have sufficient opportunity to submit QSLP claims after receiving the notice. This would be consistent with Notice 2016-16 section III.C.1, which provides that if it is not practicable for a notice of a mid-year change to be provided before the effective date of the change, notice is considered timely if it is provided as soon as practicable and no later than 30 days after the date the change is adopted.

I. ***Timing for Safe Harbor Contributions.*** Under Treasury Regulation section 1.401(k)-3(c)(5)(ii), a plan may determine safe harbor matching contributions separately with respect to each payroll period (or with respect to all payroll periods ending with or within each month or quarter of a plan year) provided that safe harbor matching contributions with respect to any elective contributions made during a plan year quarter are contributed to the plan by the last day of the immediately following plan year quarter.

With regard to contribution timing, Notice 2024-63, Q&A E-3 states that, "A plan may provide for QSLP matches to be contributed at a different frequency than elective deferral

[2] *See* Treas. Reg. section 1.401(k)-3(g); Notice 2016-16.

matches, provided that QSLP match contributions are required to be contributed not less frequently than annually." Because this statement does not exclude safe harbor contributions, it can reasonably be interpreted to mean that SLRMs, even in the case of safe harbor plans, are not subject to the timing rules applicable under Treasury Regulation section 1.401(k)-3(c)(5)(ii). However, there is uncertainty on this point and we are requesting express clarification that, even in the case of safe harbor plans, SLRMs will be timely as long as they are contributed not less frequently than annually.

J. ***Mistaken SLRMs.*** The SPARK Institute appreciates the guidance indicating that, if an employee's certification of a QSLP is determined to be incorrect, an SLRM based on that certification may, but does not need to, be corrected.[3] For plans that wish to correct mistaken SLRMs, the SPARK Institute requests guidance indicating that it is reasonable for plans to forfeit mistaken SLRMs in a manner that is consistent with how the plan handles other types of forfeitures or how the plan handles excess employer contributions under the Employee Plans Compliance Resolution System ("EPCRS").

K. ***Separate ACP Testing.*** According to Code section 401(m)(13)(B)(iv), a plan that includes an SLRM feature may apply ADP testing by applying a single ADP test for all employees, or by applying a separate ADP test for employees who receive SLRMs and a main ADP test that includes employees who do not receive SLRMs. In connection with this ADP testing relief, the SPARK Institute is requesting that Treasury and IRS consider extending similar relief for the ACP test – i.e., by permitting, for ACP testing purposes, employees who receive SLRMs to be tested separately from employees who do not receive SLRMs. While we appreciate that Congress only explicitly referred to separate ADP testing, we think it would be consistent with the purpose of the ACP test to allow separate ACP testing, and our request for guidance is within your authority. This would simplify administration, and could prevent odd testing results. After all, SLRMs must be made at the same rate as normal matching contributions.

L. ***Fee Allocations.*** The SPARK Institute requests that Treasury and IRS coordinate with the Department of Labor to issue guidance on how plan sponsors can allocate any fees that are associated with an SLRM feature among participants. Would it be reasonable, for example, to allocate such fees among all plan participants or only to those participants who claim an SLRM?

M. ***QSLP Registration.*** Code section 401(m)(4)(D)(ii) requires an employee to certify on an annual basis to the employer making the SLRM that a QSLP has been made. Notice 2024-63, Q&A B-2 provides that, to satisfy this certification requirement, certain items of information must be received by the plan. Items 4 and 5 on that list are "(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." Q&A B-2 further provides that the certification requirement for items 4 and 5 can be satisfied only through the employee's affirmative

[3] Notice 2024-63, Q&A E-4.

certification. One method of satisfying this requirement 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" (emphasis added). According to Notice 2024-63, Q&A B-3, information about items 4 and 5 does not need to be provided annually if the employee registers the loan with the plan.

The SPARK Institute requests that Treasury and IRS provide flexibility on when loan registration can occur for purposes of items 4 and 5. Specifically, we request clarification that loan registration may also occur *following* the first loan payment for which the employee claims an SLRM. For example, in the case of a plan that makes SLRMs after the end of each year, we believe that nothing should prevent an employee from registering a loan in August and receiving an SLRM for a repayment of the loan made in March. This would permit plans that offer SLRMs on an end-of-year or similar basis to make SLRMs available to more employees.

N. ***Employer Loan and Tuition Assistance.*** We have heard a question from our members about whether an employer-provided benefit that directly pays or reimburses student loans or tuition could impact the amount of any SLRMs that the employer is permitted to make. The SPARK Institute does not believe that these types of employer payments should in any way limit the SLRMs that are permitted by Section 110 of SECURE 2.0. However, we are requesting confirmation on this point.

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The SPARK Institute appreciates the opportunity to provide these comments to the Treasury Department and IRS. If you have any questions or would like more information regarding this letter, please contact the SPARK Institute's outside counsel, Michael Hadley (mlhadley@davis-harman.com) or Adam McMahon (armcmahon@davis-harman.com), Davis & Harman LLP.

Sincerely,



Tim Rouse
Executive Director