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New Guidance Provides Clarity on SECURE 2.0's Student Loan Matching Contribution Rules

In August, the Internal Revenue Service ("IRS") provided long-awaited guidance on section 110 of the SECURE 2.0 Act of 2022 ("SECURE 2.0"), which permits employers to make matching contributions to employees' retirement plan accounts based on their student loan payments.

Background

Included as part of SECURE 2.0's landmark retirement changes enacted at the end of 2022 was a provision – section 110 – which allows (but does not require) employers to make matching contributions to an employee's 401(k) plan, 403(b) plan, governmental 457(b) plan, or SIMPLE IRA if the employee makes a qualified student loan payment ("QSLP"). A QSLP is defined as a payment made by an employee to repay loan debt incurred by the employee to pay for qualified higher education expenses, such as college tuition. Under the law, matching contributions on student loan payments can only be made at the same rate as matching contributions would be made for an employee's contribution to their retirement plan.

Congress enacted section 110 to address the problem of employees not being able to take advantage of their employer's matching contributions to their retirement plan because they cannot afford to make any contributions to the plan due to their student loan obligations.

While section 110 went into effect at the beginning of 2024, the provision has not been adopted widely by employers, in part because of questions about the specifics of QSLPs that the statute does not address. The IRS indicated earlier this year that it intended to publish guidance on QSLPs to fill in some of those gaps.

New Guidance Provides More Details on QSLPs

On August 19, 2024 the IRS released [Notice 2024-63](), which provides guidance on section 110 in the form of a series of Q&As.

Key takeaways from the Notice include:

- Qualifying Loans. The Notice explains that a QSLP includes a repayment of a qualified education loan incurred by an employee to pay for qualified higher education expenses of the employee, the employee's spouse, or the employee's dependent. For a qualified education loan to be treated as incurred by an employee, the employee who makes the payment on the loan must have a legal obligation to make the payment under the terms of the loan. Thus, for example, a cosigner generally has such a legal obligation, but a guarantor does not unless the primary borrower defaults on the loan. The Notice explains that if an employee is a cosigner for the employee's dependent, both the employee and the dependent may have a legal obligation to make payments under the terms of the loan. However, only the individual who makes payments on the loan can receive a QSLP match.
- Certification Requirement. Section 110 requires the employee to certify annually to the employer that they have made payments on a qualified

education loan. The Notice provides details on how a plan may obtain the necessary employee certifications for QSLPs. For example, a certification must include information on the amount of the loan payment and the date of the payment.

- Claims Deadline. Section 110 requires the Treasury Department to prescribe regulations that permit employers to establish reasonable procedures to claim matching contributions for QSLPs, including an annual deadline by which a claim must be made no earlier than three months after the close of each plan year. This three-month claims deadline *after* the close of the plan year raised concerns for some employers. The Notice indicates that a plan may establish a deadline for an employee to claim a QSLP matching contribution that is *earlier* than three months after the close of the plan year.

Final Mental Health Parity Regulations Will Start to Take Effect for 2025 Plan Years

The latest updates to the mental health parity rules for employer-sponsored group health plans – which focus primarily on the rules for non-quantitative treatment limitations (NQTLs) and the related comparative analysis requirements – will begin to take effect for plan years beginning on or after January 1, 2025, and be fully implemented for 2026 plan years. The final regulations were released on September 9 and were published in the September 23 edition of the *Federal Register.*

Plans that do not already have a comparative analysis prepared for each NQTL that applies to their mental health and substance use ("MH/SU") disorder benefits should take steps to fill the gaps as soon as possible. Those that already do have comparative analyses should begin working to review and update them as needed to comply with the final rule's content requirements.

Due to the length and complexity of the final regulations, this will be the first in a series of RPI articles focusing on the final regulations and their impact on group health plans.

Background

In general, the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires group health plans that offer mental health and substance use (MH/SU) disorder benefits to provide such benefits on no less favorable terms than they provide medical and surgical (MS) benefits. These parity requirements apply both with respect to a plan's quantifiable treatment limitations – e.g., cost-sharing requirements – and its NQTL's, such as prior authorization requirements and provider network composition. The Affordable Care Act of 2010 extended the mental health parity rules to the individual health insurance market, among other things.

The Consolidated Appropriations Act, 2021 ("CAA, 2021") amended the MHPAEA to expressly require group health plans to prepare a comparative analysis of the design and application of any NQTL's, and to share these comparative analyses with appropriate Federal and state regulators upon request. Additionally, CAA, 2021 requires the Agencies to submit an annual report on its NQTL comparative analyses reviews to Congress.

Most recently, the Consolidated Appropriations Act, 2023 ("CAA, 2023") eliminated the ability of self-funded, non-Federal governmental plan sponsors to opt-out of the MHPAEA's requirements.

The Departments of Health and Human Services, Labor, and Treasury ("Departments") issued proposed regulations in July 2023 to update the mental health parity rules to reflect the changes enacted by CAA, 2021 and CAA, 2023, and to provide more guidance on the parity requirements relating to NQTLs, among other things.

Final Regulations

After reviewing the significant number of stakeholder comments on the proposed rules, the Departments issued final regulations "with some changes" compared with the original proposals. As explained in a Fact Sheet:

> The Departments anticipate that these final rules will improve network composition by making mental health and substance use disorder provider networks more robust, and making it easier for individuals seeking mental health and substance use disorder care to actually receive it by cutting red tape, with fewer and less restrictive prior authorization requirements and other medical management techniques to navigate. The final rules will also provide additional clarity and information needed for plans and issuers to meet their obligations under MHPAEA and for the Departments and States to enforce those obligations. The Departments intend to continue to provide guidance and compliance assistance materials in the coming months to assist plans and issuers in complying with MHPAEA and its implementing regulations, as well as informing participants, beneficiaries, and enrollees regarding their rights under MHPAEA.

But if the goals of the final regulations are straightforward and clear, the details are another story. Unfortunately, the Departments did not afford group health plans much time to analyze the final rules and take the steps needed to meet the initial compliance deadline for most provisions, which is plan years beginning on or after January 1, 2025.

What Should Group Health Plans be doing to Prepare?

As indicated above, a good starting point for plans is the comparative analysis of NQTLs that have been required since the amendments made to the MHPAEA by CAA, 2021. Most plans should have already identified all NQTLs applicable to their MH/SU disorder benefits, and prepared a comparative analysis for each.

Plans that have done that can review those comparative analyses against the content requirements in the final regulations. They can also review the final regulations' guidance on what constitutes an NQTL to make certain they are covering everything that is required. The final regulations broadly define "treatment limitations" to include anything that limits "the scope or duration of benefits for treatment under a plan or coverage." They also provide an "illustrative, non-exhaustive list" of NQTLs that includes:

- Medical management standards (such as prior authorization)
- Formulary design for prescription drugs
- Network tier design
- Standards related to network composition, including standards for provider admission to the network
- Methods for determining out-of-network rates
- Fail-first therapies or step therapy protocols

Once plans have settled on the NQTLs and they have compared existing comparative analyses against the final regulations' requirements, they should be in a better position to analyze whether they are compliant with the mental health parity rules for both quantitative treatment limitations and NQTLs.

Timing

Most aspects of the final regulations will be effective for plan years beginning on and after January 1, 2025. That does not mean that every plan necessarily needs to have a complete set of compliant comparative analyses in place by the first day of their 2025 plan years. However, plans do need to be aware that the Secretary of Labor or other regulators could request their comparative analyses at any time – and their reviews and any related enforcement actions for plan years beginning on and after January 1, 2025 will be based on the final regulations.

IRS Ruling Permits New Plan Design Allowing Employees a Choice to Allocate Employer Contributions Among 401(k), HSA, HRA, and Educational Assistance Program

In a private letter ruling ("PLR") released in August, the Internal Revenue Service ("IRS") put its stamp of approval on a unique employee benefit plan design that permits employees to make an annual election to have an employer contribution allocated to one of several types of health/ retirement accounts. While not the first IRS ruling to permit a plan design like this, this new design covers a more expansive list of accounts.

New Plan Design

The new plan design considered in the PLR involves an employer that will make an annual contribution on behalf of each eligible employee. The employer contribution will equal a percentage of compensation, and the amount that may be allocated cannot exceed a specified dollar amount. Eligible employees will be given a choice to make an annual election to allocate the employer contribution to the following: (1) the employer's 401(k) plan; (2) a retiree health reimbursement arrangement ("HRA"); (3) a health savings account ("HSA"); or (4) an educational assistance program ("EAP"). The annual election will be irrevocable. If an employee does not make an election, then the contribution will go to the 401(k) plan. The design imposes restrictions to prevent contributions from exceeding the various dollar limits established by the IRS.

IRS Ruling

The employer with this plan design submitted a request to the IRS for a PLR, which is a written determination issued to a taxpayer by the IRS that interprets and applies federal tax law to the taxpayer's specific set of facts. In response, the IRS issued PLR 202434006, which generally permits the plan design. Specifically, IRS ruled:

- The arrangement does not create a second cash or deferred arrangement that would count against the participant's annual 401(k) plan elective deferral limit;
- The arrangement does not violate the rule that HRAs be funded exclusively with employer contributions; and
- The arrangement will not affect the gross income exclusion for payments from the employer's EAP.

However, there were numerous issues the PLR did not address, and thus the IRS expressed no opinion on. These include how the arrangement would interact with the nondiscrimination requirements for HRAs and EAPs, as well as the comparable contribution requirements for HSAs.

Takeaways

While the IRS has issued favorable rulings on similar plan designs a few times over the course of the last several years (i.e., designs permitting employees to have employer contributions allocated among a defined contribution retirement plan and an HRA), this most recent PLR stands out because it expands on this design to also allow employees to allocate employer contributions to an HSA or an EAP. One key commonality between all of these designs is that the employees are not provided with a choice to receive cash in lieu of an allocation. Despite this most recent favorable ruling, questions still remain on the implications of this kind of plan design, including how the design would be treated under ERISA.

It is important to note that PLRs can only be relied upon by the taxpayer who requested the ruling, and the ruling does not express any opinions on the plan design beyond the scope of the limited federal tax issues it considered. While no other employers can rely on this ruling in developing their own plan design, PLRs are generally seen as a sign of the IRS's general thinking on a particular matter.

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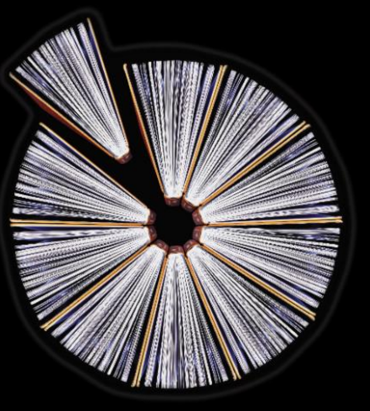

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