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Matching Puerto Rico 401(k) Participants' School Debt Repayments

By Carlos Gonzalez
BenefitsPuertoRico.com

Puerto Rico benefits consultant Carlos Gonzalez explains the rules by which U.S. companies with operations on the Island make employer matching contributions on account of qualified student loan payments by P.R. participants in either “dual-qualified” or “P.R.-only qualified” plans.

U.S. companies that provide matching contributions on qualified student loan payments for employees in retirement plans that are qualified in the United States and Puerto Rico must do so under the same terms and conditions for participants in both jurisdictions. P.R.-only qualified plans may safely provide such QSLP matching contributions by following the relevant rules of I.R.C. [§401\(m\)\(4\)\(D\)](#) and (m)(13), their enacting regulations, and IRS administrative guidance on the subject. In either case, the dual- or P.R.-only qualified plan must be amended accordingly, and the corresponding amendment must be filed with the Puerto Rico Department of the Treasury (“Hacienda”) for its administrative review and confirmation that, as amended, the plan remains duly qualified under Sections 1081.01(a) and (d) of the Puerto Rico Internal Revenue Code of 2011, as amended (the “[PRIRC](#),” pgs. 418, 432).

Securing an Opportunity for Matching Contributions

Section 110 of the [SECURE 2.0 Act of 2022](#) — Division T of the Consolidated Appropriations Act, 2023 — amended §401(m) to allow, but not require, employers to make matching contributions to their 401(k) plans on account of employees' QSLPs, effective for plan years beginning after December 31, 2023 (*i.e.*, on January 1, 2024, for calendar plan years). On August 19, 2024, the IRS issued [Notice 2024-63](#), which, in a questions-and-answers format, provides interim guidance on various issues regarding this optional plan design feature, referred to as “QSLP matches.” The U.S. Treasury Department

anticipates issuing preliminary regulations on the subject and promulgating model amendments soon.

Following is a summary of various items worth noting about how QSLP matches apply to P.R. employees participating in dual- and P.R.-only qualified 401(k) plans operating in Puerto Rico.

Dual-Qualified Plans

1. *Must QSLP matches be offered to Puerto Rico participants?*

Plan sponsors are not required to offer QSLP matches under their 401(k) plans. But if QSLP matches are made available to U.S. participants in U.S. 401(k) plans that also cover Puerto Rico participants (*i.e.*, dual-qualified plans), they must also be made available to Puerto Rico participants under the same terms and conditions.

Pursuant to Q&A A-4 and A-5 of Notice 2024-63, the uniform treatment requirement embedded within §401(m)(13)(A)(iii) precludes 401(k) plan sponsors from excluding non-union employees from QSLP matches based on the employees' participating employer, business unit, or location. Thus, non-union employees of a U.S. employer's Puerto Rico facilities must also be included in the dual-qualifying plan under the same terms and conditions.

2. *Can QSLP matches be made on account of qualified student loans related to higher education expenses incurred at an educational institution located in Puerto Rico?*

Provided that the regular loan qualification requirements of §401(m)(4)(D) are met, the fact that the educational institution to which the educational expenses relate is located in Puerto Rico does not preclude repayments on the corresponding student loan from being eligible for QSLP matches.

Basically, QSLPs are repayments of qualified student loans, which, in turn, are loans incurred by an employee to pay for qualified higher education expenses. Pursuant to I.R.C. [§221\(d\)\(2\)](#) and [§25A\(f\)\(2\)](#), “qualified higher education expenses” means the cost of attendance at an eligible educational institution, as defined in Section 481 of the Higher Education Act of 1965, as amended (the “HEA”). In practice, this covers 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. Fortunately, the HEA applies in Puerto Rico exactly as it does in the United States (20 U.S.C. [§1003\(21\)](#)), and local educational institutions are eligible to participate in federal student aid programs. Therefore, Puerto Rico colleges and universities that comply with the relevant HEA licensing requirements are eligible educational institutions for purposes of the HEA. An updated [list](#) of eligible educational institutions is available online.

In sum, repayments on a student loan that a Puerto Rico employee incurs to cover his or her higher education expenses or those of his or her spouse or dependents at an educational institution located in Puerto Rico are eligible for QSLP matches.

3. *Are Puerto Rico participants subject to different limits on QSLP matches?*

As noted above, due to the uniform treatment requirement of §401(m)(13)(A)(iii), the formula used for determining the QSLP matches that apply to Puerto Rico participants must be the same one that is used for U.S. participants. And even though Puerto Rico participants in dual-qualified plans are generally subject to a lower limit on elective deferrals than U.S. participants, that difference is immaterial for purposes of determining their QSLP matches.

Pursuant to §401(m)(4)(D)(i), the amount of an employee's loan repayments that can be considered for purposes of determining his or her QSLP matches cannot exceed the annual limit on elective deferrals of I.R.C. [§402\(g\)](#) for the relevant year, reduced by the employee's elective deferrals for the same year. For 2024, the limit is \$23,000, the amount the IRS announced in [IR-2023-203](#) to be the cost-of-living-adjusted limit on contributions to a U.S. 401(k) plan. Therefore, an employee who deferred \$20,000 during 2024 can have up to \$3,000 in loan repayments considered for QSLP matches purposes.

Pursuant to Hacienda's [Circular Letter of Internal Revenue No. 24-01](#), elective deferrals (commonly referred to by Hacienda as pre-tax contributions) and catch-up contributions by Puerto Rico participants in dual-qualified plans cannot exceed \$20,000 and \$1,500, respectively. However, those are local limits which are separate from, and have no impact on, the §402(g) limit applicable to QSLP matches. Accordingly, a Puerto Rico participant who deferred \$20,000 under a dual-qualified plan during 2024 can still have up to \$3,000 in qualified student loan repayments considered for purposes of his or her QSLP matches under the plan.

4. *Do QSLP matches impact Puerto Rico nondiscrimination testing?*

Dual-qualified 401(k) plans must, but solely with regards to their Puerto Rico participants, comply with the minimum coverage test of PRIRC §1081.01(a)(3) and the actual deferral percentage (ADP) test of PRIRC §1081.01(d)(3). These local tests are based on and essentially identical to the equivalent U.S. tests of I.R.C. §410(b) and §401(k)(3), respectively. On the other hand, the PRIRC does not have a local version of actual contributions percentage test of §401(m)(1).

Fortunately, dual-qualified 401(k) plans that pass the minimum coverage and ADP tests of the Internal Revenue Code automatically pass with the equivalent local tests, according to PRIRC §1081.01(a)(3)(E). Therefore, a 401(k) plan that complies with QSLP ADP testing rules set forth in Q&A D-1 of Notice 2024-63 does not have to be tested separately or differently for compliance with the local ADP test. The passing of the U.S. ADP test is all that is needed.

5. *Is it necessary to file with Hacienda the amendment incorporating QSLP matches into the plan?*

Yes, pursuant to Hacienda's [Circular Letter of Tax Policy No. 16-08](#), at II.A.2.c., plan amendments that change the types of employer matching contributions that can be made under a 401(k) plan must be filed with Hacienda to request a favorable determination letter confirming that, as amended, the plan continues to meet the retirement plan qualification requirements of PRIRC §1081.01(a) and (d). Ordinarily, the Hacienda filing should be completed by April 15th of the year immediately following the year in which the amendment first became effective and requires the payment of a \$350 filing fee. The filing fees must be paid electronically through Hacienda's online portal, [Colecturía Virtual](#). For example, dual-qualified plans that began offering QSLP matches during 2024 must complete the necessary Hacienda filing by April 15, 2025.

P.R.-Only Qualified Plans

Hacienda has not issued, nor is it likely to issue, any sort of rules or administrative guidance on whether and how P.R.-only qualified plans can provide for QSLP matches. However, since QSLP matches do not adversely impact Hacienda's revenue collections (e.g., QSLP matches do not reduce the W-2 wages of Puerto Rico employees, thus do not reduce their local income or payroll taxes), the author considers that P.R.-only qualified plans may validly and safely allow provide for QSLP matches if: (1) both in form and in operation, the QSLP matches

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comply with, or follow as closely as possible, the relevant rules of §401(m), its enacting regulations, and relevant IRS administrative guidance (*e.g.*, Notice 2024-63); and (2) the official plan document is amended accordingly and an executed copy of the amendment is timely filed with Hacienda, as described above.

Elective deferrals under P.R.-only qualified plans cannot exceed \$15,000/year. But since QSLP matches are only subject to the §402(g) limit, the lower local limit on elective deferrals should have no impact on the amount of QSLP matches that may be made to the accounts of participants in a P.R.-only qualified plan. For example, a local employee who deferred \$15,000 during 2024 could still have up to \$8,000 of qualified student loan repayments considered for purposes of determining his or her QSLP matches under the plan, given the \$23,000 limit stated in Hacienda's 24-01 letter.

Summary

U.S. companies operating in Puerto Rico are not required to provide matching contributions on account of

qualified student loan payments by employees enrolled in a dual-qualified retirement plan, but if they do, they must include P.R. participants under the same terms and conditions that apply to U.S. participants. P.R.-only qualified plans may safely provide for such matching contributions by following the relevant rules of both jurisdictions.

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Author Information

Carlos Gonzalez is President of [BenefitsPuertoRico.com](https://www.benefitspuertorico.com), a law firm assisting U.S. and international companies with Puerto Rico operations with employee benefits and executive compensation matters and is the author of Tax Management Portfolio 324-2nd T.M., *International Pension Planning — Puerto Rico*.