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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9021]

RIN 1545-AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from plans, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: Effective Date: These regulations are effective December 3, 2002.

Applicability Date: These regulations apply to assignments, pledges, and loans made on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part

1) under section 72 of the Internal Revenue Code of 1986 (Code). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On July 31, 2000, final regulations were published in the **Federal Register** in TD 8894 (65 FR 46588) with respect to issues arising under section 72(p)(2). On the same date, a notice of proposed rulemaking (REG-116495-99) was published in the **Federal Register** (65 FR 46677) with respect to issues arising under section 72(p)(2) that were not addressed in the 2000 final regulations. The proposed regulations addressed the suspension of loan repayments during a leave of absence for military service in accordance with section 414(u)(4), the effect of a new loan following a deemed distribution of a prior loan, and the effect of refinancings and multiple loans. The preamble to the proposed regulations also requested comments on the application of the Electronic Signature in Global and National Commerce Act (114 Stat. 464) (ESIGN), which had been enacted shortly before publication of the proposed regulations. Following publication of the proposed regulations, comments were received and a public hearing was held on January 17, 2001. After consideration of the comments received the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan, the repayment schedule, and the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments. Such a loan is not a deemed distribution to the extent it does not exceed the lesser of (i) an amount equal to $50,000, reduced to the extent that the participant’s or beneficiary’s highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans, or (ii) 50 percent of the participant’s or beneficiary’s nonforfeitable benefit. Under section 72(p)(2)(D), these limitations apply by treating the loans from all plans of the employer’s controlled group as one loan.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified employer plan or a government plan.

Summary of Comments Received, Changes Made, and Summary of the Final Regulations

These final regulations retain the general structure and much of the substance of the proposed regulations, including a variety of examples illustrating the provisions. Some changes have been made in connection with specific recommendations for modifications and clarifications. The comments received in response to the proposed regulations are generally summarized below.

A. Loan repayment suspension during leave of absence for military service in accordance with section 414(u)(4)

The proposed regulations stated that, under section 414(u)(4), a plan that permits suspension of loan repayment during a leave of absence for military service (as defined in 38 U.S.C. chapter 43) will not cause the loan to be deemed distributed, even if the leave exceeds a year. The rule was conditioned on loan repayments resuming upon the completion of the military service, the amount remaining due on the loan being repaid in substantially level installments, and the loan being fully repaid by the end of the original term of the loan plus the period of the military service. One commentator was concerned that because the requirement that interest accruing during military service be paid within the extended term would result in larger loan payments following military service than payments preceding military service, the rule could work a hardship on some participants. The commentator suggested that the regulations be modified to allow extension of the loan term in these cases to the period necessary to repay the loan with payments in the same amount as before the military service leave. Another commentator requested that the same extension of loan repayments be permitted for other bona fide leaves of absence.

Section 414(u)(4) accommodates military service personnel by permitting postponement of loan repayments while performing military service, but does not alter the accrual of interest or any conditions in section 72(p)(2). Under the proposed regulations, upon resuming repayment, a lender may permit a participant to choose to increase the amount of the payments or to make payments at the previous rate with a balloon payment due at the end of the required time. The IRS and Treasury believe that the amendments suggested by these comments would not satisfy the conditions in section 72(p)(2) that are unaffected by section 414(u)(4). Therefore, the final regulations adopt the regulation as proposed. However, an example in the final regulations has been modified to reflect the application of a maximum 6 percent interest rate during the military leave in accordance with the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. A modification has also been made to clarify that loan repayments can be revised at the end of a military leave to extend the repayment schedule in the event the loan originally had a term of fewer than five years, as discussed below at the end of Section C.

B. <u>May another loan be extended after a deemed distribution</u>

The proposed regulations provided that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then, unless certain conditions are satisfied, any payment made to the participant or beneficiary thereafter will not be treated as a loan for purposes of section 72(p)(2). Specifically, the proposed regulations provided that to avoid this result, the plan must enter into an agreement under which either repayments are made by payroll withholding or adequate security for the additional loan (in addition to the participant's accrued benefit) is obtained. Some commentators stated that because individuals often hold section 403(b) annuity contracts with more than one issuer, it may be difficult for an issuer to determine whether an individual has defaulted on a plan loan with another issuer. A concern was expressed that if upon a deemed distribution a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc., is not issued reflecting taxable income, a subsequent loan to a defaulting participant could subject the loan issuer to penalties.

However, in order to satisfy the limitations on the maximum amount that may be loaned from plans of the employer imposed by section 72(p)(2)(A), the issuer of any loan under section 72(p)(2) must inquire about other loans made from the plan or any other plan of the employer before extending a loan. As part of this process, the issuer can condition a new loan on a participant's disclosure of such prior loans and, for this purpose, can rely on an employee's certification concerning the status of prior loans, assuming the issuer has no reason to doubt the employee's certification. Accordingly, the final regulations adopt the provision as proposed.

C. <u>May a loan be refinanced</u>

The proposed regulations provided that, while a loan may be refinanced, the refinancing arrangement must satisfy the requirements of section 72(p)(2)(B) and (C) that loans be repaid in substantially level installments, not less often than quarterly and over a period not in excess of five years (longer for certain home loans). Under the proposed regulations, a refinancing is treated as a continuation of the prior loan, plus a new loan to the extent of any increase in the loan balance. Thus, while a refinancing loan can be repaid over a five-year period from the date of the refinancing to the extent the refinancing loan exceeds the prior loan amount, the prior outstanding loan must continue to be repaid in substantially level installments over a period not longer than the original term remaining on the prior loan in order for the refinancing not to result in a deemed distribution. A refinancing can also satisfy the repayment requirements of section 72(p)(2)(B) and (C) if the refinanced loan is repaid within the original term remaining on the prior loan. If any portion of the refinancing loan has a later repayment date than the original term remaining on the prior loan, then both the prior loan and the refinancing loan are treated as outstanding at the time of the refinancing for purposes of the limitations on the maximum amount that may be loaned from plans of the employer under section 72(p)(2) (which is generally the lesser of a $50,000 amount described above or 50 percent of the employee's nonforfeitable benefit). These standards were illustrated in examples.

Commentators requested that the regulations be modified so that the rules for refinancings accommodate a prior loan with a term of less than five years that is refinanced to a date that is five years from the date of the prior loan.

The final regulations generally adopt the provision on loan refinancings as proposed. However, the refinancing rules have been modified to conform with the recommendation made by commentators on the extension of a prior loan with an original term of less than five years to a term of five years from the date of the prior loan. A similar modification has also been made for repayments made following a military leave.

D. Are multiple loans permitted

Section 72(p)(2) does not prohibit a participant from borrowing from a plan more than once a year. However, in order to address the risk that additional loans could be taken out in order to avoid repayment of prior loans, the proposed regulations provided that a deemed distribution occurs if a participant obtains more than two loans a year.

Several commentators stated that obtaining loans simply to repay previous loans is an abuse that should not be permitted, and commentators and others also provided information indicating that the vast majority of defined contribution plans already include limitations under which a participant is not permitted to have more than two loans outstanding at any time. However, commentators generally requested the flexibility of being allowed to make more than two loans per year to a participant and provided various examples of situations (such as a parent with several children in college) in which a participant might have a legitimate need for multiple borrowings during a year. They also noted that there is no direct statutory foundation for limiting the number of loans under section 72(p) and that the special 12-month rule with respect to the calculation of the $50,000 limitation under section 72(p)(2)(A)(i) inherently limits the number of loans that can be made for larger borrowings. In recognition of these comments, the final regulations do not include any limitation on the number of loans that can be made under section 72(p)(2). Treasury and the IRS recognize that the absence of any limitation on the number of loans that may be made to a participant will allow certain practices that could not otherwise occur without generating taxable income through a deemed distribution under section 72(p). For example, as pointed out by certain commentators, the use of a participant's account balance under a qualified employer plan to secure a credit card is a practice that would not be permissible if the regulations were to limit the number of loans that could be made to a participant from a plan. Thus, Treasury and the IRS recognize that, because the final regulations do not include any limitation on the number of loans that can be made, there will be no section 72(p) barrier to credit card loans that otherwise meet the requirements of that section.

E. Application of ESIGN

The 2000 final regulations require that the terms of a plan loan be set forth in an enforceable agreement and provide that the agreement may be set forth in an electronic medium that satisfies standards that are based on the standards for an electronic consent to a distribution contained in §1.411(a)-11(f)(2). As noted in the preamble to the proposed regulations under §1.417(a)(3)-1 published in the **Federal Register** on October 7, 2002 (67 FR 62417) (relating to disclosure of relative values of optional forms of benefit), the IRS and the Treasury Department are considering the extent to which notices under the various Code requirements relating to qualified retirement plans can be provided electronically, taking into account the effect of ESIGN. As further noted in that preamble, the IRS and the Treasury Department anticipate issuing proposed regulations regarding these issues, and invite comments on these issues. The requirements applicable to electronic plan loan agreements may be considered in connection with those upcoming proposed regulations as well.[1]

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[1] The staff of the Board of Governors of the Federal Reserve System (Board) has advised the IRS that a plan loan that satisfies section 72(p)(2) and these regulations would

F. May section 457(b) governmental plans have plan loans

Commentators requested that the regulations be modified to clarify that eligible governmental plans under section 457(b) are permitted to offer loans to employees in a manner consistent with section 72(p). Proposed regulations under section 457 (REG-105885-99) that were published in the **Federal Register** on May 8, 2002 (67 FR 30826) clarify the conditions under which loans can be made to participants in such plans (at proposed §1.457-6(f)) and that section 72(p) applies to any such loan (at proposed §1.457-7(b)(3)).

G. Regulation effective date

The proposed regulations would have been effective on the first January 1 that is at least 6 months after they are published as final regulations. These final regulations apply to assignments, pledges, and loans made on or after January 1, 2004, but do not apply to loans made under an insurance contract that is in effect on December 31, 2003, if the

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constitute an extension of credit under 12 CFR 226.2(a)(14) of Regulation Z, implementing the Truth in Lending Act (TILA). Thus, unless the plan or the loan is otherwise excepted from the application of Regulation Z (for example, the plan could be exempt because the plan has not made enough loans to be considered a creditor under Regulation Z, or a particular loan could be exempt because it exceeds TILA's limit of $25,000 for loans not secured by real property or a dwelling), a plan loan that satisfies the requirements of Q&A-3(b) of §1.72(p)-1 would be subject to the disclosure and other requirements of Regulation Z. The staff of the Board has further advised the IRS and Treasury that, pending the Board's adoption of final rules regarding electronic disclosures, creditors may provide electronic disclosures required by Regulation Z if the consumer's consent is obtained as required under ESIGN. See 66 FR 17322 (March 30, 2001, relating to Reg. M, Consumer Leasing Act); 66 FR 17329 (March 30, 2001, relating to Reg. Z, TILA); 66 FR 17779 (April 4, 2001, relating to Reg. B, Equal Credit Opportunity Act); 66 FR 17786 (April 4, 2001, relating to Reg. E, Electronic Fund Transfer Act); and 66 FR 17795 (April 4, 2001, relating to Reg. DD, Truth in Savings Act).

insurance carrier is required to offer loans to contractholders that are not secured (other than by the participant's or beneficiary's benefit under the contract).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.72(p)-1 is amended as follows:

1. A-9, Q&A-19, are revised and A-20 is added.

2. A-22 is amended by adding paragraph (d).

The revisions and additions read as follows:

§1.72(p)-1 Loans treated as distributions.

* * * * *

A-9: (a) Leave of absence. The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A-9), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(b) Military service. In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service and the loan is repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan.

(c) Latest permissible term of a loan. For purposes of this Q&A-9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (i.e., five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A-9.

(d) Examples. The following examples illustrate the rules of this Q&A-9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2003, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2008.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2008 repaid the full balance remaining due.

Example 2. (i) The facts are the same as in Example 1, except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years and the rate of interest charged during this period of military service is reduced to 6 percent compounded annually under 50 App. Section 526 (relating to the Soldiers' and Sailors' Civil Relief Act Amendments of 1942). After the military service ends on April 2, 2006, the participant resumes active employment on April 19, 2006, continues the monthly installments of $825 thereafter, and on June 30, 2010 repays the full balance remaining due ($6,487).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A-9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2006, is increased to $930 in order to repay the loan by June 30, 2010 (without any balance remaining due then).

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Q-19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A-19: (a) General rule. Except as provided in paragraph (b) of this Q&A-19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A-19), this additional interest is not treated as an additional loan (and thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A-16 of this section.

(b) Effect on subsequent loans--(1) Application of section 72(p)(2)(A). A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) Additional security for subsequent loans. If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) Condition no longer satisfied. If, following a deemed distribution that has not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A-19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A-19 are no

longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q-20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A-20: (a) Refinancings and multiple loans--(1) General rule. A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) Loans that repay a prior loan and have a later repayment date. For purposes of section 72(p)(2) and this section (including paragraph (a)(3) of this Q&A-20 and the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the latest permissible term of the loan it replaces (the replaced loan), then the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the latest permissible term of the replaced loan is the latest date permitted under section 72(p)(2)(C) (i.e., five years from the original date of the replaced loan, assuming that the replaced loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans and that no additional period of suspension applied to the replaced loan under Q&A-9 (b) of this section). Thus, for

example, if the term of the replacement loan ends after the latest permissible term of the replaced loan and the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A), then the replacement loan results in a deemed distribution. This paragraph (a)(2) does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan) and, to the extent the amount of the replacement loan exceeds the amount of the replaced loan, a new loan that is also amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan.

(b) Examples. The following examples illustrate the rules of this Q&A-20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2005, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2009. On January 1, 2006, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005 over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A-20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2006 of the loan it replaces is $33,322, and the highest outstanding balance of loans from the plan during 2005 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006 of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2005 over the $33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2006 of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006 balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments was equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A-20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A-20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in Example 1(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006 the $6,678 excess of the refinanced loan over the January 1, 2006 balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A-20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A-20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

* * * * *

A-22: * * *

(d) Effective date for Q&A-19(b)(2) and Q&A-20. Q&A-19(b)(2) and Q&A-20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: November 7, 2002

Pamela F. Olson
Assistant Secretary of the Treasury (Tax Policy).