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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9937]

RIN 1545-BP46

Rollover Rules for Qualified Plan Loan Offset Amounts

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations relating to amendments made to section 402(c) of the Internal Revenue Code (Code) by section 13613 of the Tax Cuts and Jobs Act, Public Law 115-97 (131 Stat. 2054) (TCJA). Section 13613 of TCJA provides an extended rollover period for a qualified plan loan offset, which is a type of plan loan offset. These regulations affect participants, beneficiaries, sponsors, and administrators of qualified employer plans.

DATES: Effective Date: These regulations are effective on **[INSERT DATE THAT THE REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see §1.402(c)-3(b)(2).

FOR FURTHER INFORMATION CONTACT: Naomi Lehr at (202) 317-4102, Vernon Carter at (202) 317-6799, or Pamela Kinard at (202) 317-6000 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

## **Background**

This document amends 26 CFR part 1, by adding §1.402(c)-3 to the Income Tax Regulations to reflect changes to section 402(c) of the Code, as amended by section 13613 of TCJA.

### 1. Plan Loans, Eligible Rollover Distributions, and Plan Loan Offset Amounts

Section 72(p)(1) of the Code provides that if, during any taxable year, a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan (as defined in section 72(p)(4)(A)),<sup>1</sup> that amount shall be treated as having been received by the individual as a distribution from the plan. For certain plan loans, section 72(p)(2) provides an exception to the general treatment of loans as distributions under section 72(p)(1).

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<sup>1</sup> Under section 72(p)(4), a qualified employer plan means a qualified plan, a section 403(a) annuity plan, a section 403(b) plan, and any governmental plan.

For the exception under section 72(p)(2) to apply so that a plan loan is not treated as a distribution under section 72(p)(1) for the taxable year in which the loan is received, the loan generally must satisfy three requirements:

(1) The loan, by its terms, must satisfy the limits on loan amounts, as described in section 72(p)(2)(A);

(2) The loan, by its terms, generally must be repayable within 5 years, as described in section 72(p)(2)(B); and

(3) The loan must require substantially level amortization over the term of the loan, as described in section 72(p)(2)(C).

Section 401(a)(31) requires that a plan qualified under section 401(a) provide for the direct transfer of eligible rollover distributions. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(1), 403(b)(10), and 457(d)(1)(C).

Sections 402(c)(3) and 408(d)(3) provide that any amount distributed from a qualified plan or individual retirement account or annuity (IRA) will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B).

Sections 402(c)(3)(B) and 408(d)(3)(I) provide that the Secretary may waive the 60-day rollover requirement “where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.” See generally Rev. Proc. 2020-46, 2020-45 I.R.B. 995, which sets forth a self-certification procedure that taxpayers may use in certain circumstances to claim a waiver of the 60-day deadline for completing a rollover under section 402(c)(3)(B) or 408(d)(3)(I), and Rev. Proc. 2020-4, 2020-1 I.R.B. 148, which sets forth procedures that taxpayers may use to request a waiver of the 60-day rollover deadline by submitting a request for a private letter ruling.<sup>2</sup>

Section 1.402(c)-2, Q&A-3(a), provides that, unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee described in §1.402(c)-2, Q&A-12(a)) of all or any portion of the balance to the credit of the employee in a qualified plan. Section 1.402(c)-2, Q&A-3(b), provides that certain distributions (for example, required minimum distributions under section 401(a)(9)) are not eligible rollover distributions.

Section 1.402(c)-2, Q&A-9(a), provides that a distribution of a plan loan offset amount (as defined in §1.402(c)-2, Q&A-9(b)) is an eligible rollover distribution if it satisfies §1.402(c)-2, Q&A-3. Thus, an amount not exceeding the plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible

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<sup>2</sup> Note that the 60-day rollover deadline can also be extended to provide temporary relief during a disaster or an emergency response. For example, in response to the COVID-19 pandemic, Notice 2020-23, 2020-18 I.R.B. 742, extended the 60-day rollover deadline to July 15, 2020, for distributions made between April 1, 2020, and July 14, 2020.

retirement plan within the 60-day period described in section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Section 1.402(c)-2, Q&A-9(b), provides that a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing the loan, the employee's accrued benefit is reduced (offset) in order to repay the loan. This may occur when, for example, the terms governing a plan loan require that, in the event of an employee's termination of employment or request for a distribution, the loan is to be repaid immediately or treated as in default. A plan loan offset may also occur when, under the terms of the plan loan, the loan is canceled, accelerated, or treated as if it is in default (for example, if the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). See also §1.72(p)-1, Q&A-13(a)(2). Because a plan loan offset is an actual distribution for purposes of the Code, not a deemed distribution under section 72(p), a plan loan offset cannot occur prior to a distributable event. See generally §1.72(p)-1, Q&A-13(b).

## 2. Qualified Plan Loan Offset Amounts

Section 13613 of TCJA amended section 402(c)(3) of the Code to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts (as defined in section 402(c)(3)(C)(ii)).<sup>3</sup> Any portion of a QPLO amount (up to the entire QPLO

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<sup>3</sup> In addition to TCJA, other statutory provisions may extend the period to roll over a plan loan offset. For example, section 2202(a) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281 (2020) (CARES Act), permits an individual to receive from an eligible retirement plan up to \$100,000 for a coronavirus-related distribution (which may include a plan loan offset that otherwise meets the requirements to be a coronavirus-related distribution). A qualified individual with a coronavirus-related distribution (which may be included in gross income ratably over the 3-year period beginning with the taxable year of the distribution) may recontribute up to the amount of the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made. For

amount) may be rolled over to an eligible retirement plan by the individual's tax filing due date (including extensions) for the taxable year in which the offset occurs.

A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of:

(1) The termination of the qualified employer plan, or

(2) The failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee.

In addition, section 402(c)(3)(C)(iv) provides that the extended rollover period will not apply "to any plan loan offset amount unless such plan loan offset amount relates to a loan to which section 72(p)(1) does not apply by reason of section 72(p)(2)."

Section 301.9100-2(b) of the regulations provides rules for automatic six-month extensions to make regulatory or statutory elections. Under this rule, a taxpayer will receive an automatic extension of 6 months from the due date of a return, excluding extensions, to make elections that otherwise must be made by the due date of the return plus extensions, provided that:

(1) The taxpayer's return was timely filed for the year the election should have been made; and

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further information relating to the interaction of section 2202 of the CARES Act and plan loan offsets, see Notice 2020-50, 2020-28 I.R.B. 35.

(2) The taxpayer takes appropriate corrective action within the six-month period.

Section 301.9100-2(b) further provides that paragraph (b) does not apply to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

## **Notice of Proposed Rulemaking**

### 1. In General

On August 20, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-116475-19) in the **Federal Register** (85 FR 51369) setting forth rules in new §1.402(c)-3 for qualified plan loan offsets (QPLO proposed regulations). As described in the background of the preamble to the QPLO proposed regulations, the Treasury Department and IRS anticipate providing separate guidance with respect to Division O of the Further Consolidated Appropriations Act of 2020, Public Law 116-94 (133 Stat. 2534), titled “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act). As part of that guidance, the Treasury Department and IRS anticipate amending §1.402(c)-2 to reflect changes made by section 114 of the SECURE Act (relating to changes to section 401(a)(9) of the Code to the required beginning date applicable to section 401(a) plans and other eligible retirement plans described in section 402(c)(8)) and to add new level designations for each paragraph in the questions and answers to satisfy **Federal Register** requirements. It is anticipated that §1.402(c)-3, which includes both the new QPLO rules and already existing plan loan offset rules in Q&A-9 of §1.402(c)-2, will be

combined with §1.402(c)-2 in connection with that project (including replacing Q&A-9 of §1.402(c)-2 with paragraph (a) of §1.402(c)-3).

As an initial matter, the QPLO proposed regulations confirm that a QPLO is a type of plan loan offset; accordingly, most of the general rules relating to plan loan offset amounts apply to QPLO amounts. For example, the rule that a plan loan offset amount is an eligible rollover distribution applies to a QPLO amount. In addition, the rules in §1.401(a)(31)-1, Q&A-16 (guidance concerning the offering of a direct rollover of a plan loan offset amount), and §31.3405(c)-1, Q&A-11 (guidance concerning special withholding rules with respect to plan loan offset amounts), applicable to plan loan offset amounts in general, apply to QPLO amounts. The QPLO proposed regulations provide examples to illustrate the interaction of the special rules for QPLOs with the general rules for plan loan offsets.

## 2. Rollover Period for Plan Loan Offset Amounts, Including QPLO Amounts

Section 1.402(c)-3(a)(2)(ii)(A) of the QPLO proposed regulations provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and not a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in section 402(c)(8)(B)) within the 60-day period set forth in section 402(c)(3)(A). While a plan loan offset generally is subject to this 60-day rollover period, there are special rules for the waiver of the 60-day rollover deadline.

Section 1.402(c)-3(a)(2)(ii)(B) of the QPLO proposed regulations provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible

retirement plan through the period ending on the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan. Thus, a taxpayer with an eligible rollover distribution that is a QPLO amount may roll over any portion of the distribution to an eligible retirement plan, including another qualified retirement plan (if that plan permits) or an IRA, by the taxpayer's deadline for filing income taxes for the year of the distribution, including extensions.<sup>4</sup>

### 3. Definitions of Plan Loan Offset Amount, QPLO Amount, and Qualified Employer Plan

Section 1.402(c)-3(a)(2)(iii)(A) of the QPLO proposed regulations provides that a plan loan offset amount is the amount by which, under plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the employee's accrued benefit). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

Section 1.402(c)-3(a)(2)(iii)(B) of the QPLO proposed regulations defines a QPLO amount as a plan loan offset amount that satisfies two requirements. First, the plan loan offset amount must be treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan from such plan because of

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<sup>4</sup> For a detailed discussion of the application of §301.9100-2(b) (which provides rules for automatic six-month extensions to make regulatory or statutory elections) to the extended rollover period for QPLO amounts, see the preamble discussion in the Explanation of Provisions section of the QPLO proposed regulations, under the heading, Rollover Period for Plan Loan Offset Amounts, Including QPLO Amounts.

the severance from employment of the employee. Second, the plan loan offset amount must relate to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

Section 1.402(c)-3(a)(2)(iii)(C) of the QPLO proposed regulations define a qualified employer plan, for purposes of the QPLO amount definition, as a qualified employer plan as defined in section 72(p)(4).

#### 4. Special Rules for QPLO Determinations

Section 1.402(c)-3(a)(2)(iv) of the QPLO proposed regulations provides several special rules for purposes of determining whether a plan loan offset amount is a QPLO amount. First, the QPLO proposed regulations provide that whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under §1.401(k)-1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

Second, the QPLO proposed regulations provide that a plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the plan loan repayment terms because of severance from employment if the plan loan offset:

- (1) Relates to a failure to meet the repayment terms of the plan loan, and

(2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

Whether a plan loan offset amount is a QPLO amount is relevant to plan administrators because those administrators are responsible for reporting whether a distribution is a plan loan offset amount or a QPLO amount on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and furnishing that form to the taxpayer.<sup>5</sup> In the QPLO proposed regulations, the Treasury Department and the IRS indicated that the proposed 12-month rule would assist plan administrators in identifying QPLO amounts by providing a bright-line rule for determining whether a plan loan offset amount following a severance from employment satisfies the first requirement in §1.402(c)-3(a)(2)(iii)(B) to be a QPLO amount.

The QPLO proposed regulations proposed to apply the subsequent final regulations to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the date of publication of a Treasury decision adopting the proposed rules as final regulations. The preamble to the QPLO proposed regulations also stated that taxpayers (including a filer of a Form 1099-R) may rely on the proposed regulations with respect to plan loan offset amounts, including qualified

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<sup>5</sup> The Instructions to the 2020 Form 1099-R provide that if an employee's accrued benefit is offset to repay a loan (a plan loan offset amount), the administrator should report the distribution as an actual distribution and not use Code L (for deemed distributions) in box 7. For a QPLO amount, the Instructions to the 2020 Form 1099-R provide that the administrator should enter Code M (for QPLO amounts) in box 7.

plan loan offset amounts, treated as distributed on or after August 20, 2020, and before the date the regulations are published as final regulations in the **Federal Register**.

The Treasury Department and the IRS received one written comment relating to the QPLO proposed regulations. No request for a public hearing was made, and no public hearing was held. After consideration of the comment, this Treasury decision adopts the QPLO proposed regulations with one important modification relating to the applicability date.

### **Summary of Comments and Explanation of Revisions**

The commenter stated that the bright-line 12-month rule in the QPLO proposed regulations is a helpful approach in determining whether a plan loan offset amount is a QPLO amount, but expressed concern that recordkeepers may not currently have procedures to track a terminated employee's date of severance or the one-year anniversary of that date. To address this concern, the commenter recommended that the Treasury Department and the IRS (i) consider an alternative bright-line rule under which a plan loan offset amount is treated as satisfying the requirement in §1.402(c)-3(a)(2)(iv)(B) if the plan loan offset occurs by the end of the year following the calendar year in which the employee has a severance from employment, and (ii) delay by one year the effective date of the final regulations (or, alternatively, provide for a one-year period of time during which a person responsible for reporting a QPLO amount on Form 1099-R will not be viewed as improperly reporting it, provided that a reasonable, good faith effort is made to determine if a plan loan offset is a QPLO).

With respect to the first recommendation, the Treasury Department and the IRS have considered the alternative bright-line rule suggested by the commenter, but have retained in the final regulations the 12-month rule in §1.402(c)-3(a)(2)(iv)(B) of the QPLO proposed regulations. Although the 12-month rule is a bright-line rule that may assist plan administrators and recordkeepers in satisfying their reporting obligations, it is also an interpretation of a statutory requirement that should apply to all taxpayers in the same manner. The alternative rule recommended by the commenter could result in significantly different treatment of participants based solely on when during a calendar year each participant severs from employment. For example, Taxpayer A, who severs from employment on December 31, 2020, could experience a plan loan offset during a 366-day period following the severance and be treated as having a QPLO (and thus be eligible for the extended rollover rule), whereas Taxpayer B, who severs from employment one day later, on January 1, 2021, could experience a plan loan offset during a 729-day period and receive the same treatment.

With respect to the commenter's second recommendation to delay the effective date of the final regulations, the Treasury Department and the IRS agree that additional time to implement §1.402(c)-3 is appropriate. Accordingly, the applicability date in these final regulations is revised from the QPLO proposed regulations, which had proposed to apply the regulations to plan loan offset amounts treated as distributed on or after the date of publication of final regulations. Under the revised applicability date, the final regulations will apply to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. Thus, for example, the rules in §1.402(c)-3 will first apply to 2021 Form 1099-Rs required to be filed and

furnished in 2022 (more than one year after the date of publication of the final regulations). This delayed applicability date will give plan administrators and recordkeepers additional time to program systems and otherwise establish procedures for obtaining the exact date of severance from employment of a plan participant and tracking the one-year anniversary of that date.

The applicability date in these final regulations is also revised to provide that taxpayers (including a filer of a Form 1099-R) may apply these regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020, which is the date of the publication of the QPLO proposed regulations.

### **Applicability Date**

These regulations apply to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. Thus, for example, the rules in §1.402(c)-3 will first apply to 2021 Form 1099-Rs required to be filed and furnished in 2022. However, taxpayers (including a filer of a Form 1099-R) may apply these regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020.

### **Statement of Availability for IRS Documents**

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <https://www.irs.gov>.

## **Special Analyses**

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In addition, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulations reflect the statutory changes to section 402(c) made by section 13613 of TCJA. The regulations reflect the extended rollover period for QPLO amounts, as amended by TCJA. Specifically, the regulations reflect the statute in a manner that (i) is consistent with the statutory language, (ii) provides certain clarifications, and (iii) eases and facilitates plan administration. Although the regulations might affect a substantial number of individuals, the economic impact of the regulations is not expected to be significant. The regulations do not impose any new compliance burdens on taxpayers and are not expected to result in any economically meaningful changes in behavior.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

## **Drafting Information**

The principal authors of these regulations are Naomi Lehr and Pamela R Kinard of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), although other persons in the IRS and the 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 1.402(c)-3 is added to read as follows:

### **§1.402(c)-3 Eligible rollover distributions; Qualified plan loan offsets**

(a)(1) Q-1 What special rollover rules apply to a plan loan offset amount (including a qualified plan loan offset amount)?

(2) A-1--(i) In general--(A) Eligible rollover distribution. A distribution of a plan loan offset amount, as defined in paragraph (a)(2)(iii)(A) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph

(a)(2)(iii)(B) of this section), is an eligible rollover distribution if it satisfies §1.402(c)-2, Q&A-3 and 4.

(B) Other rules relating to plan loan offset amounts. See §1.401(a)(31)-1, Q&A-16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also §31.3405(c)-1, Q&A-11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(ii) Rollover period for a plan loan offset amount--(A) Plan loan offset amount that is not a qualified plan loan offset amount. A distribution of a plan loan offset amount that is an eligible rollover distribution and not a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in §1.402(c)-2, Q&A-2) within the 60-day period set forth in section 402(c)(3)(A).

(B) Plan loan offset amount that is a qualified plan loan offset amount. A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(iii) Definitions--(A) Plan loan offset amount. For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of

circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(B) Qualified plan loan offset amount. For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(1) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(2) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

(C) Qualified employer plan. For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(iv) Special rules for qualified plan loan offset amounts--(A) Definition of severance from employment. For purposes of paragraph (a)(2)(iii)(B)(1) of this section,

whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under §1.401(k)-1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(B) Offset because of severance from employment. A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(1) Relates to a failure to meet the repayment terms of the plan loan, and

(2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(v) Examples. The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (a) and in §§1.401(a)(31)-1, Q&A-16, and 31.3405(c)-1, Q&A-11, of this chapter. For purposes of these examples, each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(A) Example 1--(1) In 2020, Employee A has an account balance of \$10,000 in Plan Y, of which \$3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2020. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(II), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2020

(within the 12-month period beginning on the date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(2) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying \$7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the \$3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to \$3,000) that is an eligible rollover distribution. However, under §1.401(a)(31)-1, Q&A-16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the \$3,000 plan loan offset amount.

(3) No withholding is required under section 3405(c) on account of the distribution of the \$3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(4) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(B) Example 2--(1) The facts are the same as in paragraph (a)(2)(v)(A) of this section (Example 1), except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2021, at which time Employee A does not make the loan installment payment due on January 1, 2021. In accordance with §1.72(p)-1, Q&A-10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid \$3,000 loan balance against Employee A's account balance on July 1, 2021 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(2) The conclusion is the same as in paragraph (a)(2)(v)(A) of this section (Example 1), except that the \$3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the \$3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(C) Example 3--(1) The facts are the same as in paragraph (a)(2)(v)(A) of this section (Example 1), except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is

automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2020, by the amount of the \$3,000 unpaid loan balance.

(2) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(D) Example 4--(1) The facts are the same as in paragraph (a)(2)(v)(A) of this section (Example 1), except that Employee A elects to receive a cash distribution of the account balance that remains after the \$3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(2) The amount of the distribution received by Employee A is \$10,000 (\$3,000 relating to the plan loan offset and \$7,000 relating to the cash distribution). Because the amount of the \$3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of \$2,000 (20 percent of \$10,000) is required under section 3405(c). The \$2,000 is required to be withheld from the \$7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of \$5,000.

(3) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on the Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to \$7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(E) Example 5--(1) The facts are the same as in paragraph (a)(2)(v)(D) of this section (Example 4), except that the \$7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(2) No withholding is required under section 3405(c) because the distribution consists solely of the \$3,000 plan loan offset amount and the \$7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(3) Employee A may roll over up to the \$7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning

of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(F) Example 6--(1) Employee B, who is age 40, has an account balance in Plan Z. Plan Z provides for no after-tax employee contributions. In 2022, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(2) Employee B fails to make an installment payment due on April 1, 2023, or any other monthly payments thereafter. In accordance with §1.72(p)-1, Q&A-10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2023). Employee B does not make a plan loan installment payment during the cure period. On September 30, 2023, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to §1.402(c)-2, Q&A-4(d), the deemed distribution is not an eligible rollover distribution.

(3) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

(G) Example 7--(1) The facts are the same as in in paragraph (a)(2)(v)(F) of this section (Example 6), except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(2) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (a)(2)(iii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(b)(1) Q-2 When are the rules in this §1.402(c)-3 applicable to plan loan offset amounts, including qualified plan loan offset amounts?



(2) A-2 Applicability date. The rules provided in paragraph (a) of this section are applicable to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. However, taxpayers (including a filer of a Form 1099-R) may choose to apply these regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020.

Sunita Lough,  
Deputy Commissioner for Services and Enforcement.

Approved: December 1, 2020.

David J. Kautter,  
Assistant Secretary of the Treasury (Tax Policy).