

MOORPARK CITY COUNCIL  
AGENDA REPORT

TO: Honorable City Council

FROM: Johnny Ea, Finance Director



DATE: July 24, 2007 (HCC Meeting of 08/01/07)

SUBJECT: Consider Resolution Amending Resolution No. 2004-2174 and No. 2005-2373, the City's ICMA Retirement Corporation Governmental Money Purchase Plan & Trust Adoption Agreement for 401 (a) Plan

**BACKGROUND**

In 2004, the City Council approved the establishment of a 401 (a) Money Purchase Plan with ICMA-RC for designated employee groups. The Plan Agreement was subsequently amended in 2005 to provide more flexibility to staff to contribute into the Plan. The proposed amendment to the Plan Agreement will provide eligible Plan participants the ability to borrow funds from their respective plan account balance.

**DISCUSSION**

Two of the basic 401 (a) Plan features are as follows:

- 1) Employees can withdraw their contribution from the 401(a) Plan, however, employees will incur a 10% premature withdrawal penalty unless they withdraw funds over ten (10) years if over age 55 or unless they are at least 59½; and
- 2) Once a participant pre-tax contribution is elected, that percentage of regular wages may not be revised or revoked (with the exceptions being disability leave or termination of employment).

Under the current Plan Agreement, only the City Manager, Assistant City Manager, Deputy City Manager and Department Heads are eligible to participate. At the time the plan was offered, there was no consensus from management employees to participate and the represented employees did not request participation as part of the meet and confer discussions.

The following is a summary of the proposed loan program for the Council's consideration:

1. A "Loans Guidelines Agreement" must be completed and the Plan Agreement must be amended to allow loans.
2. A loan may be taken from participant account balances for all purposes.
3. Participants may only receive one loan per calendar year and only one loan may be outstanding at a time.
4. Generally, all loans must be repaid within five years for the date the loan is made. However, loans for the purpose of buying a principal residence may be repaid up to a maximum of 15 years.
5. Loan repayments will be repaid through payroll deductions.
6. Loans are only available to active plan participants. Former employees, beneficiaries, and alternate payees are not allowed to take a loan.
7. Loans may be submitted by participants through Direct Application (written form) or on Account Access, ICMA-RC's online account program.
8. All loans are due and payable when a participant receives a distribution of part of his/her account balance after separation from service.

"A Guide to Implementing a Loan Program" (Attachment 1) provides a summary of the loan program. The "Loan Guidelines Agreement for a Retirement Plan" (Exhibit A of the Resolution) sets specific guidelines for the City and participants to follow prior to establishing a loan.

Staff recommends adding the loan program. Current employees as well as future hires could utilize this to assist with buying a principal residence. This could assist with retention and recruitment of employees. In addition, the loan program could also offer employees an option for funding other items such as college tuition. The following summarizes the recommendation of the optional features of the proposed loan program:

1. All purposes.
2. Loans for principal residence capped at 15 years; loan for all other purposes at 5 years.
3. Loans are repaid only through payroll deductions and must be repaid in full when a participant receives a distribution of part of his/her account balance

after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

4. Only one loan at any time.
5. Loans may be from both participant and employer contribution accounts.

**STAFF RECOMMENDATION**

Adopt Resolution No. 2007-\_\_\_\_\_ approving an amendment to Resolutions Nos. 2004-2174 and 2005-2373, the City's 401(a) Plan, and authorize the City Manager to sign the "Loan Guidelines Agreement for a Retirement Plan" and the "Amendment to ICMA-RC Governmental Section 401 Plan & Trust Adoption Agreement" for the City of Moorpark.

- Attachments:
1. "A Guide to Implementing a Loan Program"
  2. Resolution No. 2007 - \_\_\_\_\_

# A GUIDE TO IMPLEMENTING A LOAN PROGRAM



A loan program in your retirement plan provides eligible plan participants the ability to borrow funds from their plan account balance. Adding loans to your retirement plan is a big step. As the administrator of your loan program, ICMA-RC will attempt to minimize the amount of resources you need to devote to the program.

**However, there are administrative and fiduciary responsibilities associated with offering loans which, as a practical matter, cannot be delegated to ICMA-RC.** For this reason, before you design a program that is right for you and your employees, there are several issues you may wish to consider. And the decisions you make in designing your loan program will determine the resources you, as the plan sponsor, will have to commit to that program.

This brochure details the issues you should consider in designing your retirement plan loan program.

### **LOAN GUIDELINES**

In order to offer loans from a retirement plan, the Internal Revenue Code (the Code) requires that you establish written guidelines that govern the granting of loans. Included in this packet is the Loan Guidelines Agreement that you must complete and formally adopt to establish your loan program.

Along with completing the *Loan Guidelines Agreement*, you must amend your plan document to allow loans. You will need to send to ICMA-RC a statement executed by a designated official or resolution approved by your governing body, as applicable to your plan. In addition, if you are adding a loan provision to a 401 plan, the adoption agreement applying to that plan must be amended. A sample resolution and an adoption agreement amendment form are included in this package. If you have any questions about amending your plan document to allow for loans, please call our Client Services Team toll-free at 1-800-326-7272.

The Code provides you with some flexibility when establishing your Loan Guidelines as long as the guidelines are consistent with the plan document provisions on loans and with section 72(p) of the Code.

#### **1. Eligibility (Section II in Loan Guidelines Agreement)**

You may allow a loan to be taken from (1) vested employer contributions and/or (2) participant account balances. You may designate whether or not a loan may be taken

- (A) for all purposes or
- (B) only in the case of hardship or other certain specified financial situations.

*401 Plans:* Under the Code, only employers can authorize a hardship for loan purposes. Upon request, ICMA-RC will provide an opinion to you concerning the likely compliance of the hardship within the requirements of the Code and regulations. Normally, for loan purposes, hardship and other specified situations include, but are not limited to: unreimbursed medical expenses, buying or rehabilitating the participant's principal residence, and paying for college education for the participant or his/her dependents. Car loan, car repairs, and the purchase or repair of a vacation or rental property would not be included in the hardship definition.

The option you choose to define "loan purpose" in the Eligibility section will have a significant impact on the number of loans made from your plan. Obviously, if you choose "for all purposes," more of your employees will request loans than if you select "hardship or other specified financial situations only."

*457 Plans:* Loans must be coordinated with unforeseeable emergency withdrawals. The emergency withdrawal regulations under Section 457 of the Code require that an emergency withdrawal be a resource of the "last resort." If the participant is able to take a loan from your ICMA-RC 457 plan or any other plan you sponsor, the participant has resources available to meet, or partially meet, the financial need. Therefore, a participant will be required to take a loan before taking an emergency withdrawal.

Many emergency withdrawals are not approved because the financial need, while serious, may not meet the conditions itemized in the 457 regulations. The ability to take a loan will allow participants access to money that is not otherwise available. And the repayment provisions for loans ensures that participants replenish their accounts, thereby preserving their retirement savings.

#### **2. Frequency of Loans (Section III in Loan Guidelines Agreement)**

Participants may receive only one loan per calendar year. However, you may elect to allow participants to have either

- (A) only one loan outstanding at a time or
- (B) no more than five loans outstanding at one time.

The option you choose under Frequency of Loans will have an impact on the number of loans made from your plan. It may also have a direct impact on your payroll system if you select Payroll Deduction as a repayment option for your participants. *Each loan repayment for each pay period must be accounted for separately.* Repayments of multiple loans are a much larger burden on your payroll system (and personnel) than a repayment of a single loan.

**3. Length of Loan (Section V in Loan Guidelines Agreement)**

Generally, all loans must be repaid within five years from the date the loan is made. There is an exception for loans used to buy, but not to improve or repair, a principal residence. In the case of a loan for buying a principal residence, you may specify the number of years, not to exceed 30, over which the loan must be repaid.

In determining the maximum repayment period for residential loans, you should be mindful that the loan term may extend beyond the period the participant is employed by you. If you allow employees to continue to pay their loans after they separate from service (see Acceleration of Loan Repayment on the next page), repayments would continue by the participant, through you, for the entire term of the loan (e.g., 30 years). Every payroll period, the participant (former employee) will be required to give you a check for the periodic loan repayment amount. You then include this amount with your next contribution submittal to ICMA-RC. *Loan repayments may not be made directly to ICMA-RC by the participant, unless you choose ACH debit as a repayment option.*

**4. Loan Repayment Process (Section VI in Loan Guidelines Agreement)**

All loans must be repaid either through payroll deduction or through ACH debit as long as the employee is actively employed by you. For payroll deducted payments, ICMA-RC's media used for remitting contribution detail (e.g. EZLink, magnetic tape, or diskette) allow for the inclusion of loan repayment detail. Participants may pay off their loans early by requesting that you submit a larger repayment amount from their pay on their regularly scheduled repayment dates through your contribution submittals to ICMA-RC. Please note that no payment date may be "skipped" even if the employee has made a large payment or submitted multiple payments.

The enclosed Loan Guidelines Agreement form allows your plan to offer a participant the option of making loan repayments via direct debit of the employee's bank account. Direct debit is authorized by the participant and allows ICMA-RC to debit loan repayments from the participant's bank account via Automated Clearing House (ACH). With this feature, you are free of the burden of establishing and monitoring payroll deduction and submitting of repayments to ICMA-RC.

Please note that you will not be notified directly when a participant's bank account has insufficient funds for a complete loan repayment. The EZLink loan reports that will be available to you online will provide this information. It is possible that participant loans may default more often for lack of payment when participants choose ACH repayment rather than payroll deduction. You may

choose to restrict certain participants to payroll deduction for this reason.

In implementing a loan program you should be aware that some employers who offer loans through their retirement plan have had to contend with the inability of some participants to repay their loan(s). You should be aware that you may *not* stop taking loan repayments from the employee's paycheck – even if the employee asks that repayments be stopped. Failure to payroll-deduct loan repayments on schedule could both jeopardize the eligibility or qualification of the entire plan as well as create a taxable event for the participant.

Likewise, if an employee is repaying the loan through ACH debit of his/her bank account, and the employee fails to make payments, this could jeopardize the eligibility of your retirement plan. Employers are ultimately responsible for ensuring that loans are repaid according to the loan terms. ICMA-RC assists you by notifying both you and the employee if a payment has not been received.

Your plan may allow terminated employees to continue to repay their loans either through ACH debit of their bank account, or by giving/sending you a check each repayment period (refer to Acceleration of Loan Repayment section on page three). If you adopt this latter repayment method, you will include the repayment amount given to you by the former employee in your next regular employee contribution remittance to ICMA-RC.

If a participant has more than one loan outstanding at any one time, then each loan repayment must be separately reported to ICMA-RC.

**5. Loan Application Procedures (Section VIII in Loan Guidelines Agreement)**

(A) Active Employees Only – Loans are available only to active employees. Former employees, beneficiaries, and alternate payees may not take a loan.

(B) Request Submittal – Loan requests may be submitted by participants through the Direct Application (written form) or on Account Access, ICMA-RC's online account program. To offer these features, the employer pre-authorizes ICMA-RC to approve loan requests. Otherwise, all loan requests must be in writing, signed by the participant, and approved by you, the employer.

Under the Code, the amount of the loan may not exceed a maximum amount. *The amount available for a loan is affected by all other loans the participant may have outstanding or has recently paid off from your ICMA-RC retirement plan, and any other retirement plans you sponsor.* Please refer to page 7 for a worksheet illustrating how maximum loan amounts are calculated. The loan modeling program in Account Access incorporates this calculation automatically.

(C) Check Issuance -- Unless you select Direct Application or online (Account Access) application, the participant is required to sign acceptance of a promissory note evidencing the loan and a disclosure statement, which includes an amortization schedule. Upon receipt of an approved loan application, ICMA-RC will prepare these loan documents and send them, along with the loan check. The loan check may not be given to the participant until all of these loan documents have been signed by the participant. Once the loan documents are signed, you return them to ICMA-RC. Because the promissory note is considered a plan asset, all loan documents must be complete and preserved by ICMA-RC for at least the life of the loan.

With online loans or Direct Application, ICMA-RC sends loan documents with the check to the participant. When the participant endorses the check, that signifies acceptance of terms.

For payroll-deducted loan repayments, once a loan is issued, your payroll department must ensure that loan repayments are withheld from the employee's paycheck each pay period, in the amount specified on the amortization schedule, until the loan is repaid in full. It is essential that the amortization schedule coincide with your payroll cycle. ICMA-RC can help you determine the first pay date on which you should withhold loan repayments.

**6. Acceleration of Loan Repayment (Section X in Loan Guidelines Agreement)**

You have three options for determining how outstanding loans are accelerated:

- A. All loans are due and payable in full upon the employee's separation from service. The employee may not continue to pay off his/her loan once he or she separates from service.
- B. After separation from service, all loans are due and payable in full as soon as the participant takes a withdrawal of any amount from the plan.
- C. After separation from service, all loans are due and payable in full only when the participant withdraws his/her entire account balance.

You should consider these options carefully, since each provision could result in a taxable event for the participant. If a participant does not repay the outstanding loan amount at the time it is due, the loan is "foreclosed." This means that the outstanding loan amount must be reported by the plan administrator (ICMA-RC) as a taxable distribution in the year of the foreclosure.

On the other hand, given the burdens associated with collecting loan repayments from former employees, you may

not wish to maintain a potentially long term "relationship" with former employees (especially in the case of residential loans).

You should carefully consider the level of responsibility each option entails.

**7. Deemed Distribution of Delinquent Loans (Section XIV in Loan Guidelines Agreement)**

Internal Revenue Service (IRS) regulations governing participant loans issued after December 31, 2001, have provided clarification on requirements for loan processing. The regulations have always established loan criteria such as term and borrowing limitations. However, the regulations now specifically illustrate how plan sponsors should treat delinquent loans, which violate the special rules allowing loans to be made from retirement plan assets.

A loan typically becomes a deemed distribution when scheduled payments are not made in adherence with the granted "cure period." The maximum allowable cure period is the end of the calendar quarter following the calendar quarter in which the payment was due. For example, if a participant's loan payment is due February 1st, the maximum cure period for the repayment is June 30th. If the total amount of all delinquent payments is not received by the end of the cure period, the loan is deemed a distribution. The principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, the taxable distribution is not the only event in conjunction with a deemed distribution. The following negative consequences occur as a result of deemed distribution.

- The deemed distribution is a taxable event. However, it is not an actual distribution and therefore remains an asset of the participant's account. The outstanding loan balance and accrued interest are reported on the participant's account statement.
- Repayment of a deemed distribution will not change or reverse the taxable event.
- The loan continues to be considered outstanding until it is repaid or "offset" using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in your plan document.
- ICMA-RC requires participants to repay any outstanding deemed distributed loan before they can become eligible for a new loan. The deemed distributed loan and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan.
- A recent IRS ruling requires that a participant who has had a prior deemed distribution must make repayments

to a new loan through payroll deduction, or provide proof of adequate security.

Employers, as plan sponsors and fiduciaries, have an obligation to comply with plan document and loan guideline requirements applicable to participant loans. In this regard, loan payments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. Employers retain this obligation if there is a loan program associated with their retirement plan, even if participants apply for loans online, and regardless of the method of repayment - whether participants are repaying their loans through ACH debit or payroll deduction.

Employers who do not ensure proper loan repayment practices in their retirement loan programs risk not only having individual participant loans being deemed distributions, but also potentially jeopardize the tax-favored status of the entire plan. In the extreme, plans with mismanaged loan programs - a high occurrence of deemed distributed loans, and/or program participants in default, for example - may be disqualified (in the case of 401 plans) or classified as ineligible (for 457 plans) by the IRS. Disqualification results in the loss of tax-deferred status for all contributions and a possible increase in the taxable income for participating employees.

It is a plan sponsor's and plan administrator's fiduciary obligation to properly manage the retirement plan and its benefits. Mismanagement of a loan program may be considered failure to meet this fiduciary obligation and may expose a plan sponsor to litigation, in addition to being in violation of applicable laws and regulations.

To assist plan sponsors whose plan options include loans, ICMA-RC will provide reports of participants with payments delinquent by 30 to 89 days, 90 or more days but not yet deemed, and those whose loans have been deemed distributed. ICMA-RC is committed to supporting employers who request assistance with their loan programs in order to reduce the number of delinquent loans and decrease the occurrence of deemed distributions.

## **SPECIAL CIRCUMSTANCES**

If you have more than one retirement plan, ICMA-RC will administer your loan program, but you will have to perform some loan verification activities. You will also have to perform these activities if loans are available to your employees from several like retirement plans, such as two different qualified plans, or if you have different types of retirement plans (e.g. Section 457 deferred compensation and section 401 qualified plan). The degree of your involvement will depend on your situation.

### **1. Multiple Plans**

If you offer *several retirement plans*, each with its own plan document and provisions unique to each administrator, ICMA-RC and your other administrators should be able to administer loans because these are distinct plans and the loan provision applies at the *plan* level. However, the Code sets a maximum on the aggregate of all loans from all retirement plans in which the employee participates. No provider will be able to calculate, by itself, the maximum amount that a participant may borrow at any point in time. Since only you, the employer, can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any retirement plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining all loan amounts currently outstanding and repaid in the last 12 months. For your convenience, ICMA-RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

If you elect online loans, participants are asked to input all outstanding loan balances in their online worksheet so that the program can properly calculate the maximum amount. Participants are on the "honor system" when they enter other loan amounts; ICMA-RC is unable to verify any loan amounts associated with plans administered by other providers. However, if there are any outstanding loans in other plans administered by ICMA-RC, our online program will take them into account.

### **2. Single Retirement Plan/Multiple Providers**

If you have adopted a single retirement plan with one master plan document under which ICMA-RC and your other administrator(s) must operate, then you may ultimately have to self-administer your loan program, *unless* you require:

- that the maximum that may be borrowed from any provider is 50 percent of the balance with that provider and
- that the loan must be repaid only to the provider from which the loan was made.

If you do not impose these requirements, you may have to self-administer your loan program. This is because of:

- Problems calculating the loan amount.

The amount available for a loan is based, in part, on the total account balance in *the plan*. Since employees *may* have balances with more than one of the administrators, ~~only you, the employer, can determine the actual account balance by aggregating the balance for each administrator.~~

The Code sets a maximum on the aggregate of *all* loans from all retirement plans in which the participant participates. Since only you can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any retirement plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining *all* loan amounts currently outstanding and repaid in the last 12 months. For your convenience, ICMA-RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

- Problems preparing loan documents.

Each loan has terms and conditions that are reflected in the promissory note, disclosure statement and amortization schedule for the loan. Other providers may be able to prepare these documents if given all the pertinent information about the loan by you. However, the other provider may be reluctant to provide documents for a loan to which it is not a party. And it may be difficult for the other provider's system to provide documents for a loan in an amount that exceeds what its system shows is available.

- Problems keeping accurate loan records.

Since loans are generally made and recordkept on a plan level basis, theoretically, a participant could take a loan in the amount of his/her entire balance with one administrator because the loan is collateralized by the balance with another administrator. And the participant may elect to allocate loan repayments either between administrators or to an administrator other than the administrator who made the loan. Unless a loan is unique to one of the administrators, both in amount and repayment terms, only you, the employer, will be able to track loan repayments, especially if repayments are being made to more than one administrator.

### 3. Multiple Types of Retirement Plans/Multiple Providers

If you make loans available to your employees from all of your retirement plans (e.g. Section 457 deferred compensation plan and Section 401 qualified plan), each plan administrator should be able to administer loans because these are distinct plans and the loan provision applies at the plan level. However, no administrator will be able to calculate, by itself, the maximum amount that a partici-

pant may borrow at any point in time. This is because the Code sets a maximum on the aggregate of all loans from all 401 and 457 plans in which the participant participates. Since only you, the employer, can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any 401 or 457 plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining all loan amounts currently outstanding and repaid in the last 12 months. For your convenience, RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

Many 457 plans are what are referred to as "co-administered" plans. There are actually two different types of arrangement both of which are referred to as co-administered or co-provider plans:

- (1) multiple 457 plans offered by an employer through two or more administrators, each administrator having its own plan document and features.
- (2) a single 457 plan with multiple administrators providing essentially different investment options.

In both of these situations, it will be difficult for an administrator to correctly administer a loan provision across multiple plans. It will also be difficult for you to correctly administer a loan's provisions in situations where you make loans available to employees from your 457 plan(s) and another retirement plan (e.g. Section 401 money purchase or profit sharing plan).

## **CONCLUSION**

You may be able to minimize your involvement in administering a loan program under either a single plan/multiple provider arrangement or a multiple plan arrangement. However, you cannot avoid having to determine whether each loan amount requested is consistent with the aggregate maximum.

The above information is intended to provide an overview of the issues and complexities of establishing and maintaining a loan program under the most common types of retirement plan arrangements. It is not intended to be all inclusive. Other issues may arise and some issues may be mitigated by a plan's individual design. Special situations and/or solutions not discussed above will have to be analyzed on a case-by-case basis. Please contact ICMA-RC's Client Services Team at 1-800-326-7272 with any questions related to these issues.



RESOLUTION NO. 2007-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING RESOLUTION NO. 2004-2174 AND NO. 2005-2373, BY AMENDING THE CITY OF MOORPARK GOVERNMENTAL MONEY PURCHASE PLAN AND TRUST ADOPTION AGREEMENT FOR THE 401 (a) Plan (Plan No. 108573)

WHEREAS, on March 3, 2004 the City Council adopted Resolution No. 2004-2174 authorizing the establishment of a 401 (a) Money Purchase Plan and Trust with the ICMA Retirement Corporation for designated employee groups; and

WHEREAS, on August 31, 2005 the City Council adopted Resolution No. 2005-2373, amending Resolution No. 2004-2174; and

WHEREAS, a staff report has been presented to said Council recommending an amendment to the City of Moorpark ICMA Retirement Corporation Governmental Money Purchase Plan & Trust Adoption Agreement to allow eligible participants to take loans from the Plan; and

WHEREAS, Exhibit A "Loan Guidelines Agreement for a Retirement Plan" and Exhibit B "Amendment to ICMA-RC Governmental Section 401 Plan & Trust Adoption Agreement" describes said amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That Resolution No. 2005-2373 is hereby amended to incorporate Exhibit A "Loan Guidelines Agreement for a Retirement Plan" and Exhibit B "Amendment to ICMA-RC Governmental Section 401 Plan & Trust Adoption Agreement" for the City of Moorpark.

SECTION 2. That the City Manager or his/her designee is authorized to execute the attached Exhibits "A" and "B" to the Plan Agreement .

SECTION 3. That the City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this 1st day of August, 2007.

\_\_\_\_\_  
Patrick Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, City Clerk

Attachment: 1. Exhibit A "Loan Guidelines Agreement for a Retirement Plan"  
2. Exhibit B "Amendment to ICMA-RC Governmental Section 401  
Plan & Trust Adoption Agreement"

# LOAN GUIDELINES AGREEMENT FOR A RETIREMENT PLAN



**INSTRUCTIONS****(Please refer to the previous section, "A Guide to Implementing a Loan Program")**

These Loan Guidelines must be completed before loans can be made from your retirement plan. You should consider each option carefully before making your selections because your selections will apply to all loans made while the selection is in effect. If you later change any provision, the changes will apply only to loans made after the change is adopted. Loans in existence at the time of any future changes will continue to operate under the guidelines that were in effect at the time the loan was originally made.

Note: If loans are available to your employees from other plans (e.g. other Section 457 deferred compensation plans or other Section 401 plans), calculation of the maximum loan amount must consider the aggregate of all loans from all 401 and 457 plans in which the employee participates. See the Maximum Loan Amount Worksheet on page 7 of *A Guide to Implementing a Loan Program*, found in this packet.

Name of Plan (please state the Employer's complete name, including state): \_\_\_\_\_

Plan Type:     401(a) Money Purchase Plan     401 Profit-Sharing Plan     457 Deferred Compensation Plan

ICMA-RC Plan Number: \_\_\_\_\_

**I. Purpose**

The purpose of these guidelines is to establish the terms and conditions under which the Employer will grant loans to participants. This is the only official Loan Provision Document of the above named Plan.

**II. Eligibility**

Loans are available to all active employees. Loans will not be granted to participants who have an existing loan in default. Loans will be pro-rated among all the funds in which the participant is invested at the time the loan is made.

For 401 plans only:

Loans are available from the following sources: [select one or both]

- Employer Contribution Account (vested balances only)
- Participant Contribution Accounts (pre- and post-tax, if applicable, including Employee Mandatory, Employee Voluntary, Employer Rollover, and Portable Benefits Accounts, but excluding the Deductible Employee Contribution/Qualified Voluntary Employee Contribution Account)

For all plan types:

Loans are available for the following purposes: [select one]

- All purposes
- Loans shall only be granted in the event of a participant's hardship or for the purpose of enabling a participant to meet certain specified financial situations. The employer shall approve the participant's loan application after determining, based on all relevant facts and circumstances, that the amount of the loan is not in excess of the amount required to relieve the financial need. For this purpose, financial need shall include, but not be limited to: unreimbursed medical expenses of the participant or members of the participant's immediate family, establishing or substantially rehabilitating the principal residence of the participant, or paying for a college education (including graduate studies) for the participant or his/her dependents.

**III. Frequency of loans** [select one]

- Participants may receive one loan per calendar year. Moreover, participants may have only one (1) outstanding loan at a time.
- Participants may receive one loan per calendar year. Moreover, no participant may have more than five (5) loans outstanding at one time.

**IV. Loan amount**

The minimum loan amount is \$1,000.

The maximum amount of all loans to the participant from the plan and all other plans sponsored by the Employer that are qualified employer plans under section 72(p)(4) of the Code is the *lesser* of:

- (1) \$50,000, reduced by the highest outstanding balance of all loans from any 401 or 457 plans for that participant during the one-year period ending on the day before the date a loan is to be made, or
- (2) one half of the participant's vested account balance, reduced by the current outstanding balance of all 401 and 457 loans from all plans for that participant.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

A loan cannot be issued for more than the above amount. The participant's requested loan amount is subject to downward adjustment without notice due to market fluctuation between the time of application and the time the loan is made.

**V. Length of loan**

A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years.

Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed \_\_\_\_\_ / <sup>5</sup> [state number of years] years (maximum 30 years).

**VI. Loan repayment process**

Loan repayments for active employees must be through (choose one):

- Payroll deduction only.  
PL642(2) = 2
- ACH debit only.  
PL642(2) = 0
- Employee may choose either payroll deduction or ACH debit.  
PL642(2) = 1

If payroll deduction repayment is allowed, and the employee wishes to use this method, the employee must notify the Employer so that the Employer can ensure that repayment will begin as soon as practicable on a date determined by the Employer's payroll cycle. Failure to begin payroll deduction in a timely way could lead to the employee's loan entering delinquency status. Payroll deduction should begin within two payroll cycles following the employee's receipt of the loan.

Repayments through payroll deduction will be sent via check or wire by the Employer to ICMA-RC on the following cycle (choose one):

- Weekly (52 per year)
- Bi-weekly (26 per year)
- Semi-monthly (24 per year)
- Monthly (12 per year)

If ACH debit repayment is allowed, debits from the employee's designated bank account will begin approximately one month following the date the employee's signed ACH authorization form is received and processed by ICMA-RC, or, in the case of online loans, approximately one month following the date the loan check has been cleared for payment. Debits will normally be made on a monthly basis.

Loans outstanding for former employees or employees on a leave of absence must be repaid on the same schedule as if payroll deductions were still being made unless they reamortize their loans and establish a new repayment schedule that provides that substantially equal payments are made at least monthly over the remaining period of the loan.

Loan payments, including loan payments from former employees, are allocated to the participant's current election of investment options on file with ICMA-RC.

The participant may pay off all or a portion of the principal and interest early without penalty or additional fee. Extra payments are applied forward to both principal and interest as specified in the original repayment schedule, unless the additional payment is for the balance due.

## **VII. Loan interest rate**

The rate of interest for loans of five (5) years or less will be based on prime plus 0.5%.

The rate of interest for loans for a principal residence will be based on the FHA/VA rate.

Interest rates are determined on the last business day of the month preceding the month the loan is disbursed. The interest rate is locked in at the time a loan is approved and remains constant throughout the life of the loan.

The prime interest rate is determined on the last business day of each month using [www.nfsn.com](http://www.nfsn.com) as the source. The FHA/VA interest rate is also determined on the last business day of each month using [www/bankofamerica.com](http://www.bankofamerica.com) as the source.

Loan interest rates for new loans taken in different months may fluctuate upward or downward monthly, depending on the movement of the prime and FHA/VA interest rates.

The employer may modify the manner in which loan interest rates will be determined, but only with respect to future loans.

## **VIII. Loan application procedure**

Loans must be requested using the following method (**check one**):

- Online only:** All loans must be requested online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), with Employer pre-authorization as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access.

The promissory note, truth-in-lending rescission notice and disclosure statement are presented to the employee online through Account Access at the time the employee submits the loan request. The employee confirms receipt and acceptance of these documents by clicking on the affirmative buttons on the Account Access program.

*The employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

**Online and through Direct Loan application:** All loans must be requested either online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), or through the Direct Loan application, both of which require pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access. In the case of the Direct Loan Application, spousal consent should be sent along with the application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents and terms at the time the endorsed check is presented for payment.

*The Employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as either ICMA-RC's receipt of a loan application (complete and in good order), or the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

**Direct Loan application only:** All loans must be requested through the Direct Loan application, which requires pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC along with the Direct Loan Application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents at the time the endorsed check is presented for payment.

*The employer hereby authorizes all future loans requested on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as ICMA-RC's receipt of a loan application (complete and in good order).

The loan check will generally be issued from the employee's account on the next business day following redemption. The loan check will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

**Loan application through the Employer:** All loans must be requested in writing on an application approved by the plan administrator. The application must be signed by the participant. The Employer must review and approve each participant's application.

The participant will be required to sign a promissory note evidencing the loan and a disclosure statement that includes an amortization schedule prior to receiving a loan check. Loan checks will generally be issued on the next business day following ICMA-RC's receipt of a complete loan application. The loan check, promissory note, disclosure statement and truth-in-lending rescission notice will be sent to the employer, who will obtain the necessary signatures and deliver the check to the participant. All executed documents must be returned to ICMA-RC within 10 calendar days from the date the check is issued.

## IX. Security/Collateral

That portion of a participant's account balance that is equal to the amount of the loan is used as collateral for the loan. The collateral amount may not exceed 50 percent of the participant's account balance at the time the loan is taken. Only the portion of the account-balance that corresponds to the amount of the outstanding loan balance is used as collateral.

## X. Acceleration [select one]

- All loans are due and payable in full upon separation from service.
- All loans are due and payable when a participant receives a distribution of **all** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.
- All loans are due and payable when a participant receives a distribution of **part** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

## XI. Reamortization

Any outstanding loan may be reamortized. Reamortization means changing the terms of a loan, such as length of repayment period, interest rate, and frequency of repayments. A loan may not be reamortized to extend the length of the loan repayment period to more than five (5) years from the date the loan was originally made, or in the case of a loan to secure a principal residence, beyond the number of years specified by the employer in Section V above.

A participant must request the reamortization of a loan in writing on a reamortization application acceptable to the plan administrator. Upon processing the request, a new disclosure statement will be sent to the employer for endorsement by the participant and approval by the employer. The executed disclosure statement must be returned to the plan administrator within 10 calendar days from the date it is signed. The new disclosure statement is considered an amendment to the original promissory note, therefore a new promissory note will not be required.

A reamortization will not be considered a new loan for purposes of calculating the number of loans outstanding or the one loan per calendar year limit.

## XII. Refinancing existing loans

If a participant has one outstanding loan, that loan may be refinanced. If a participant has more than one outstanding loan, no loans may be refinanced. Refinancing means concurrently repaying an existing loan and borrowing an additional amount through a new loan. Refinancing includes any situation in which one loan replaces another loan and the term of the replacement loan does not exceed the latest permissible term of the replaced loan.

In order to refinance an existing loan, a participant must request this in writing on an application approved by the plan administrator. Such request must be made at a time when the participant is eligible to obtain a loan as defined by the employer in Section III above. The amount of the additional loan amount requested for the purpose of refinancing is subject to the loan limits specified in Section IV above.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan.

### **XIII. Reduction of Loan**

If a participant dies prior to full repayment of the outstanding loan(s), the outstanding loan balance(s) will be deducted from the account prior to distribution to the beneficiary(ies). The unpaid loan amount is a taxable distribution and may be subject to early withdrawal penalties. The participant's estate is responsible for taxes or penalties on the unpaid loan amount, if any. A beneficiary is responsible for taxes due on the amount he or she receives. A Form 1099 will be issued to both the beneficiary and the estate for these purposes.

### **XIV. Deemed Distribution**

Loan repayments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. If a scheduled payment is not paid within 30, 60, and/or 90 days of the due date, a notice will be sent to both the employee and the employer.

A loan will be deemed distributed when a scheduled payment is still unpaid at the end of the calendar quarter following the calendar quarter in which the payment was due. If the total amount of any delinquent payment is not received by ICMA-RC by the end of the calendar quarter following the calendar quarter in which the payment was due, the loan is considered a taxable distribution, and the principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, no money is paid in this distribution, because the participant already has the loan proceeds.

The loan is deemed distributed for tax purposes, but it is not an actual distribution and therefore remains an asset of the participant's account. Interest continues to accrue. The outstanding loan balance and accrued interest are reported on the participant's account statement.

Repayment of a deemed distribution will not change or reverse the taxable event.

The loan continues to be outstanding, and to accrue interest, until it is repaid or offset using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in the plan document.

Participants are required to repay any outstanding loan which has been deemed distributed before they can be eligible for a new loan. The deemed distribution and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan. New loans must be repaid through payroll deduction.

The employer is obligated by federal regulation to comply with the loan guideline requirements applicable to participant loans, and to ensure against deemed distribution by monitoring loan repayments, regardless of the method of repayment, and by advising employees if loans are in danger of being deemed distributed. The tax-qualified status or eligibility of the entire plan may be revoked in cases of frequent repayment delinquency or deemed distribution.

### **XV. Fees**

Fees may be charged for various services associated with the application for and issuance of loans. All applicable fees will be debited from the participant's account balance and/or from the participant's loan repayments prior to crediting the repayment of principal and interest to the participant's account. A schedule of fees applicable to this plan is specified in ICMA-RC's current publication of *Making Sound Investment Decisions: A Retirement Investment Guide*.

**XVI. Other**

The employer has the right to set other terms and conditions as it deems necessary for loans from the plan in order to comply with any legal requirements. All terms and conditions will be administered in a uniform and non-discriminatory manner.

In Witness Whereof, the employer hereby caused these Guidelines to be executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

EMPLOYER

Accepted: ICMA RETIREMENT CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

# AMENDMENT TO ADOPTION AGREEMENT FOR SECTION 401 PLANS



**AMENDMENT**

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ICMA-RC Plan #:   1     0   \_\_\_\_\_

ICMA RETIREMENT CORPORATION  
GOVERNMENTAL SECTION 401 PLAN & TRUST  
ADOPTION AGREEMENT

Below is an amendment to an existing defined contribution 401 qualified plan.

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If yes, please specify the name of the plan to which this amendment applies:

\_\_\_\_\_

I. Employer: \_\_\_\_\_

II. Loans are permitted under the plan, as provided in Article XIII of the Adoption Agreement and in the executed Loan Guidelines Agreement:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

EMPLOYER

ICMA RETIREMENT CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: Paul F. Gallagher

Attest: \_\_\_\_\_

Title: Assistant Secretary