TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: James L. Bennett, County Attorney

SUBJECT: Approval of Amendment to ICMA-RC §457 Deferred Compensation Plan

DATE: October 6, 2009

RECOMMENDATION: IT IS RECOMMENDED THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE THE ATTACHED AMENDMENT REGARDING THE PROCESSING OF HARDSHIP WITHDRAWALS; APPROVE THE ATTACHED LOAN GUIDELINES AS REPLACEMENT TO THOSE APPROVED OCTOBER 7, 2008 AND AFTER APPROVAL AS TO FORM, THAT THE CHAIRMAN BE AUTHORIZED TO SIGN THE AMENDMENT LETTER AND THE LOAN GUIDELINES AGREEMENT AND THE CLERK TO ATTEST HIS SIGNATURES.

DISCUSSION: Normally, participants cannot access the money in their §457 accounts while still employed. However, the tax code defines emergency circumstances which allow participants to make hardship withdrawals from their §457 accounts. International City/County Management Association (ICMA), one of our §457 plan providers, has agreed to process the requests for such withdrawals for the County at no cost to the County from participants in the ICMA plan.

To accomplish this, it is necessary to amend our current Administrative Services Agreement with ICMA (Attachment #1) by approving and signing the attached letter (Attachment #2). If this amendment is approved and executed, ICMA will handle all administrative aspects of hardship withdrawals from the plan on behalf of Pinellas County. The County, however, will retain the ultimate authority on any hardship withdrawal decision and a participant whose withdrawal request is denied will still be able to appeal that denial to the County, as is the case now. Amending the Administrative Services Agreement will lessen the administrative burden on Human Resources which currently handles such requests.

Therefore, it is recommended that the Board approve the letter amendment to the Administrative Services Agreement and the Chairman execute the document.

Secondly, ICMA recently advised the County that in order to implement the loan program the Board approved at its meeting on October 7, 2008, additional documents are needed. Specifically, ICMA has requested that we execute the attached Loan Guidelines Agreement (Attachment #3). This will replace the previously adopted guidelines in their entirety (Attachment #2 from Item #44 on the Board of County Commissioner's October 7, 2008 agenda, attached to this memorandum as Attachment #4).
Therefore, it is recommended that the Board approve the Loan Guidelines and that the Chairman execute the Loan Guidelines Agreement.

JLB/CSS/cad
Attachments
H:\USERS\ATYKB03\WPDOCS\CS\Personnel\BENEFITS\ICMA\10-06-09 board memo.doc
NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: ICMA 457 Deferred Compensation – Amendments to permit hardship withdrawal and loan processing by ICMA

CONTRACT NO.: N/A ESTIMATED EXPENDITURE / REVENUE: None
(Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment.

Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and forward to the next Review Authority on the list, skipping any authority marked “N/A.” Indicate suggested changes by noting those in “Comments” column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT: See board memo for details.

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Please return to Dave Blasewitz, HR by asap. All inquiries should be made to Dave Blasewitz ext. 42932. Thank you.
ADMINISTRATIVE SERVICES AGREEMENT

Between

ICMA Retirement Corporation

and

Pinellas County

Type: 457

Account #: 300191, 301428, 301429, 301430, 301632, 303277
ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement"), made as of the 15th day of October, 2008 (herein referred to as the "Inception Date"), between the International City/County Management Association Retirement Corporation ("ICMA-RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware, and Pinellas County ("Employer"), a subdivision of the State of Florida organized and existing under the laws of the State of Florida with an office at 400 South Fort Harrison, Clearwater, Florida 33756.

RECITALS

Employer acts as a public plan sponsor for a retirement plan ("Plan") with responsibility to obtain investment alternatives and services for employees participating in that Plan;

VantageTrust (the "Trust") is a common law trust governed by an elected Board of Trustees for the commingled investment of retirement funds held by various state and local governmental units for their employees;

ICMA-RC acts as investment adviser to the Trust; ICMA-RC has designed, and the Trust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Trust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide." ("Retirement Investment Guide").

The Funds are available only to public employers and only through the Trust and ICMA-RC.

In addition to serving as investment adviser to the Trust, ICMA-RC provides a complete offering of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account record-keeping, investment and tax reporting, transaction processing, benefit disbursement, and asset management.

AGREEMENTS

1. Appointment of ICMA-RC

Employer hereby appoints ICMA-RC as Administrator of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan with respect to
assets in the Plan deposited with the Trust. The functions to be performed by ICMA-RC shall be those set forth in Exhibit A to this Agreement.

2. **Adoption of Trust**

Employer has previously adopted the Declaration of Trust of VantageTrust and agrees to the continued commingled investment of assets of the Plan within the Trust. Employer agrees that operation of the Plan and the investment, management, and distribution of amounts deposited in the Trust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those terms and conditions may be adjusted from time to time. It is understood that the term "Employer Trust" as it is used in the Declaration of Trust shall mean this Administrative Services Agreement.

3. **Employer Duty to Furnish Information**

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Trust, and information as to the employment status of participants, and participant ages, addresses, and other identifying information (including tax identification numbers). ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and ICMA-RC shall not be responsible for any error arising from its reliance on such information. ICMA-RC will provide account information in reports, statements or accountings.

4. **Certain Representations and Warranties**

ICMA-RC represents and warrants to Employer that:

(a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of ICMA-RC to serve as investment adviser to the Trust is dependent upon the continued willingness of the Trust for ICMA-RC to serve in that capacity.

(b) ICMA-RC is an investment adviser registered as such with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. ICMA-RC Services, LLC (a wholly owned subsidiary of ICMA-RC) is registered as a broker-dealer with the U.S. Securities and Exchange Commission ("SEC") and is a member in good standing with Financial Industry Regulatory Authority ("FINRA") and the Securities Investor Protection Corporation ("SIPC").
Plan number 300191, 301428, 301429, 301430, 301632, 303277

(c) ICMA-RC shall maintain and administer the Plan in compliance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code and other applicable federal law; provided, however, that ICMA-RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms. Further, in the event that the Employer uses its own customized plan document, ICMA-RC shall not be responsible for the eligible status of the Plan to the extent affected by terms in the Employer’s plan document that differ from those in ICMA-RC’s standard plan document. ICMA-RC shall not perform any service that ICMA-RC, in its sole judgment, considers might cause ICMA-RC to be treated as a “fiduciary” of the Plan under applicable law.

Employer represents and warrants to ICMA-RC that:

(d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

(e) Employer understands and agrees that ICMA-RC’s sole function under this Agreement is to act as recordkeeper and to provide administrative, investment or other services at the direction of Plan participants, the Employer, its agents or designees in accordance with the terms of this Agreement. Under the terms of this Agreement, ICMA-RC does not render investment advice, is not the Plan Administrator or Plan Sponsor as those terms are defined under applicable federal, state, or local law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the Plan and the Trust.

(f) Employer acknowledges that certain such services to be performed by ICMA-RC under this Agreement may be performed by an affiliate or agent of ICMA-RC pursuant to one or more other contractual arrangements or relationships, and that ICMA-RC reserves the right to change vendors with which it has contracted to provide services in connection with this Agreement without prior notice to Employer.

5. Participation in Certain Proceedings
The Employer hereby authorizes ICMA-RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Employer Plan. Unless Employer notifies ICMA-RC otherwise, Employer consents to the disbursement by ICMA-RC of benefits that have been garnished or transferred to a former spouse, current spouse, or child pursuant to a domestic relations order or child support order.

6. **Compensation and Payment**

   (a) There shall be no asset-based or per-participant fees charged under this Agreement. ICMA-RC’s compensation under this Agreement shall be as set forth in subsection (b) below.

   (b) Compensation for Management Services to the Trust, Compensation for Advisory and other Services to The Vantagepoint Funds and Payments from Third-Party Mutual Funds. Employer acknowledges that in addition to amounts payable under this Agreement, ICMA-RC receives fees from the Trust for investment management services furnished to the Trust. Employer further acknowledges that certain wholly owned subsidiaries of ICMA-RC receive compensation for advisory and other services furnished to The Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through the Trust. The fees referred to in this subsection are disclosed in the Retirement Investment Guide. These fees are not assessed against assets invested in the Trust’s Mutual Fund Series. In addition, to the extent that third party mutual funds are included in the investment line-up for the Plans, ICMA-RC may receive payments from such third party mutual funds or their service providers, which may be in the form of 12b-1 fees, service fees, or compensation for sub-accounting or other services provided by ICMA-RC on behalf of the funds.

   (c) Redemption Fees. Redemption fees imposed by outside mutual funds in which Plan assets are invested are collected and paid to the mutual fund by ICMA-RC. ICMA-RC remits 100% of redemption fees back to the specific mutual fund to which redemption fees apply. These redemption fees and the individual mutual fund’s policy with respect to redemption fees are specified in the prospectus for the individual mutual fund and referenced in the Retirement Investment Guide.

   (d) Payment Procedures. All payments to ICMA-RC pursuant to this Section 6 shall be paid out of the Plan assets held by the Trust and shall be paid by the Trust, to the extent not paid by the Employer. The amount of Plan assets held in the Trust shall be adjusted by the Trust as required to reflect such payments.
The compensation and payment set forth in this section 6 is contingent upon the Employer's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement.

Employer further acknowledges and agrees that compensation and payment under this Agreement shall be subject to re-negotiation in the event that the Employer chooses to implement additional mutual funds outside of the ICMA-RC Mutual Fund Alliance.

7. **Custody**

Employer understands that amounts invested in the Trust are to be remitted directly to the Trust in accordance with instructions provided to Employer by ICMA-RC and are not to be remitted to ICMA-RC. In the event that any check or wire transfer is incorrectly labeled or transferred to ICMA-RC, ICMA-RC may return it to Employer with proper instructions.

8. **Indemnification**

ICMA-RC shall not be responsible for any acts or omissions of any person with respect to the Plan or related Trust, other than ICMA-RC in connection with the administration or operation of the Plan.

9. **Term**

This Agreement shall be in effect and commence on the date all parties have signed and executed this Agreement ("Inception Date"). The term of this Agreement will commence on the Inception Date and extend five years from that date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such Agreement year. In the event that sufficient funds are not available for a new fiscal period, this agreement shall terminate on the last day of the then current fiscal period without penalty or expense to the County.

10. **Amendments and Adjustments**

(a) This Agreement may not be amended except by written instrument signed by the parties.

(b) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.
(c) The parties agree that enhancements may be made to administrative and operations services under this Agreement. The Employer will be notified of enhancements through the Employer Bulletin, quarterly statements or special mailings. Likewise, if there are any reductions in fees, these will be announced through the Employer Bulletin, quarterly statement or special mailing.

11. **Notices**

All notices required to be delivered under Section 10 of this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to (i) Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C., 20002-4240; (ii) Employer at the office set forth in the first paragraph hereof, or to any other address designated by the party to receive the same by written notice similarly given.

12. **Complete Agreement**

This Agreement shall constitute the complete and full understanding and sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. This Agreement supersedes all written and oral agreements, communications or negotiations among the parties. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. **Titles**

The headings of Sections of this Agreement and the headings for each of the attached schedules are for convenience only and do not define or limit the contents thereof.

14. **Incorporation of Schedules**

All Schedules (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

15. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto certify that they have read and understand this Agreement and all Schedules attached hereto and have caused this Agreement to be executed by their duly authorized officers as of the Inception Date first above written.
Plan number 300191, 301428, 301429, 301430, 301632, 303277

PINFAS COUNTY

By ___________________ Date 10/15/08
Signature

Robert B. Stewart, Chairman
Name and Title (Please Print)

INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION

By ___________________

Angela C. Montez
Assistant Corporate Secretary

Please return fully executed contract to:
New Business Unit
ICMA-RC
777 North Capitol Street NE
Suite 600
Washington DC 20002-4240

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By ___________________ Attorney

8
Administrative Services

The administrative services to be performed by ICMA-RC under this Agreement shall be as follows:

(a) Participant enrollment services, including providing a welcome package and enrollment kit containing instructions and notices necessary to implement the Plan's administration.

(b) Establishment of participant accounts for each employee participating in the Plan for whom ICMA-RC receives appropriate enrollment forms and records. ICMA-RC is not responsible for determining if such Plan participants are eligible under the terms of the Plan.

(c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment funds offered under the Trust.

(d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.

(e) Maintenance of records for all participants for whom participant accounts have been established in paper or electronic format. These files shall include enrollment instructions, beneficiary designation instructions (to the extent provided to ICMA-RC) and all other written correspondence and documents concerning each participant's account, and if applicable, records of any transaction conducted through the Voice Response Unit ("VRU"), the Internet or other electronic means.

(f) Provision of periodic reports to the Employer and participants of the status of Plan investments and individual accounts.

(g) Communication to participants of information regarding their rights and elections under the Plan.

(h) Making available Investor Services Representatives through a toll-free telephone number from 8:30 a.m. to 9:00 p.m. Eastern Time, Monday through Friday (excluding holidays and days on which the securities markets or ICMA-RC are closed for business (including emergency closings), to assist participants.

(i) Making available a toll-free number and access to VantageLine, ICMA-RC's interactive VRU, and ICMA-RC's web site, to allow participants to access certain account information and initiate plan transactions at any time.
Plan number 300191, 301428, 301429, 301430, 301632, 303277

(l) Distribution of benefits as agent for the Employer in accordance with terms of the Plan.

(k) Upon approval by the Employer that a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan, ICMA-RC will establish a separate account record for the alternate payee and provide for the investment and distribution of assets held thereunder.

(l) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the Employer.

(m) Online Advice may be made available through a third party vendor on the terms specified on ICMA-RC’s website.
September 10, 2009

Jason Keene
Legal Counsel
ICMA-RC
777 North Capitol Street
Washington, DC 20002

RE: Pinellas County Deferred Compensation Plan # 123456
   Emergency Withdrawal Authorization Authority

Dear Mr. Keene:

This letter sets forth the mutual understanding and agreement between ICMA Retirement Corporation ("ICMA-RC") and Pinellas County ("County") for the processing of emergency withdrawal requests on behalf of participants in the Pinellas County’s 457 Deferred Compensation Plan ("Plan"). The Plan allows for emergency withdrawal requests. And pursuant to the Administrative Services Agreement (ASA) between the County and ICMA-RC, this letter will serve as an amendment to the ASA. ICMA-RC is hereby authorized to make emergency distributions in accordance with the terms of the Plan.

By executing this letter, the County and ICMA-RC hereby agree as follows:

1. ICMA-RC will receive emergency withdrawal requests from participants with Plan accounts maintained by ICMA-RC, and will determine within a reasonable time whether any such request complies with the criteria for an unforeseeable emergency under section 457 of the Internal Revenue Code ("Code") and related regulations.

2. ICMA-RC shall make available to the County and participants in the Plan copies of the ICMA-RC 457 Deferred Compensation Plan Emergency Withdrawal Packet to be used in connection with emergency withdrawal requests. Employer will notify participants that they must complete the packet and submit it, along with documentation required to support the amount of the withdrawal requested, to ICMA-RC for processing.

3. The County understands and agrees that adequate supporting documentation must be provided by a participant in order for ICMA-RC to make a determination regarding compliance of the employee’s request with the Code and regulatory requirements, and that a request that does not include such documentation will be denied. A participant may resubmit an emergency withdrawal request so denied, along with the necessary supporting documentation, for reconsideration by ICMA-RC.
4. The County further acknowledges and agrees that the County retains the ultimate discretionary authority with respect to final decisions regarding a participant’s emergency withdrawal request. And that a participant may “appeal” the denial of an emergency withdrawal request by ICMA-RC to the County. ICMA-RC shall advise Plan participants that they may appeal the denial of an emergency withdrawal request to the County.

If these terms are agreeable with ICMA-RC please sign below on behalf of ICMA-RC and return one copy to me at the County.

Pinellas County, Florida

By: ____________________________

Title: __________________________

Date: __________________________

Signature for ICMA-RC

Title: Assistant Secretary

Name: Angela C. Martinez

please print

Date: 01/16/09
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.
Loan Guidelines Agreement

Name of Plan (please state the Employer’s complete name, including state): Pinellas County BOCC

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

ICMA-RC Plan Number: 300191, 301428, 301429, 301430 and 303277

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 \[ \text{years} \text{ } \] years (maximum 30 years).

VI. Loan repayment process

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

- Payroll deduction only.  
  \[ \text{PL642(2)} = 2 \]
- ACH debit only.  
  \[ \text{PL642(2)} = 0 \]
- Employee may choose either payroll deduction or ACH debit.  
  \[ \text{PL642(2)} = 1 \]

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 sub-
stantially 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 as the source. The FHA/VA
interest rate is also determined on the last business day of each month using 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 move-
ment 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, 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 employ-
ee'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, 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 they 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

By: ______________________________________

Title: ______________________________________

Attest: ____________________________________

Accepted: CMA RETIREMENT CORPORATION

By: ______________________________________

Title: Assistant Secretary

Attest: ____________________________________

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY

By: ___________________________

Attorney
401/457 PLAN
LOAN PROGRAM IMPLEMENTATION
PACKET FOR EMPLOYERS

This packet includes:

• A Guide to Implementing a Loan Program

• Loan Guidelines Agreement for a Retirement Plan

• Suggested Resolution for a Legislative Body Relating to Amending a Retirement Plan to Permit Loans

• Loan Administration Agreement for Section 457 Deferred Compensation Plans

• Amendment to Adoption Agreement for Section 401 Plans
**LOAN PROGRAM IMPLEMENTATION AT-A-GLANCE**

In this Loan Program Implementation Package, you will find:

- *A Guide to Implementing a Loan Program* — This brochure details the issues you should consider in designing your loan program.

- *Loan Guidelines Agreement for a Retirement Plan* — These guidelines must be completed before loans can be made from your retirement plan. This document enables you to establish the features of your loan program.

- *Suggested Resolution for a Legislative Body Relating to Amending a Retirement Plan to Permit Loans* — We have included one version that can be used for any plan type — Section 457 Deferred Compensation plans, Section 401 Money Purchase plans, and Section 401 Profit-Sharing plans. If your governing body requires that a resolution be passed when amendments are made to the plan, we have included a suggested resolution for your use. If your governing body does not require that a resolution be passed, please disregard the suggested resolution.

- *Loan Administration Agreement for 457 Plans* — This document applies only to 457 plans where more than one provider is involved in loan administration. If you have adopted a single 457 plan document under which ICMA-RC and one or more other providers must operate, you may ultimately have to self-administer your loan program unless you agree to the requirements specified in this Agreement.

- *Amendment to 401 Plan Adoption Agreement* — This document applies to 401 plans only and amends your current plan to allow loans.

**Steps to Implement a Loan Program for your ICMA-RC Retirement Plan:**

1. Carefully read *A Guide to Implementing a Loan Program*.
2. Complete the *Loan Guidelines Agreement*.
3. Using the Suggested Resolution as a guide, obtain a resolution from your governing body to adopt the loan provision (if required).
4. Execute the *Loan Administration Agreement* (457 plans only) or the *Amendment to Adoption Agreement* (401 plans only).
5. Return the completed *Loan Guidelines Agreement*, a copy of the resolution (if required by your entity), and either the *Loan Administration Agreement* (457 plans) or the *Amendment to Adoption Agreement* (401 plans) to:
   
   ICMA-RC  
   Attention: New Business Analyst  
   777 North Capitol Street NE  
   Washington, DC 20002-4240

Please allow 10 business days to set up your plan to allow loans.

Please contact our Client Services Team at 1-800-326-7272 if you have any questions about implementing your Retirement Plan Loan Program.
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 submittal 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 repayment 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.
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 losing 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 a 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-
CALCULATING THE AMOUNT AVAILABLE FOR A LOAN

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. 50% 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.

In addition, each loan must be collateralized, at the time it is made, by one half of the participant's vested account balance in the plan from which the loan is being made. Therefore, the actual amount a participant may take as a loan is the LESSER of the maximum dollar amount described above or 50 percent of the account balance.

### Maximum Loan Amount Worksheet (Required under the Internal Revenue Code)

To estimate the maximum amount of a loan for which a participant may be eligible, calculate each step and select the lesser of the total of Step 1 or Step 2. If the participant has had no outstanding 401 or 457 plan loans in the last 12 months, you may enter $50,000 as the total in Step 1 and proceed to Step 2.

**Step 1.** $50,000

A. $50,000 is the maximum.

B. Enter the highest outstanding loan balance during the previous 12 months from 457 and 401 plan loans.

**Step 1 Total** Subtract Line B from Line A.

**Step 2.**

C. Enter 50% of the present value of the total account balance in the plan from which the loan will be issued, including any outstanding loan balance.

D. Enter the current outstanding 401 and/or 457 plan loan balance(s).

**Step 2 Total** Subtract Line D from Line C.

**Step 3.**

E. Enter the lesser of Step 1 and Step 2 totals.

**Maximum Loan Amount = Line E**

The actual amount that may be borrowed will be calculated using the participant's account balance on the day the loan is made.
Deferred Compensation

Loan Guidelines
**Instructions**

These Loan Guidelines must be completed before loans can be made from your deferred compensation 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 you have more than one 457 provider or if loans are available to your employees from another retirement plan (eg. Section 401 money purchase or profit sharing plan) there are some important issues you should consider prior to completing these Loan Guidelines. Please refer to the "Special Circumstances" section of the ICMA-RC brochure titled "A Guide to Establishing a 457 Deferred Compensation Loan Program".

The following instructions correspond to the information you must complete beginning on the next page.

**Name of Plan:** Please state the Employer's complete name, including State.

**II. Eligibility**

You may allow a loan to be taken either (1) for all purposes or (2) only in the case of hardship or other certain specified financial situations.

The option you choose will have a significant impact on the number of loans made from your plan. If you choose "for all purposes", you will be contending with significantly more loan requests than if you select "hardship or other specified financial situations only".

**II. Frequency of loans**

You may elect to allow participants to have either (1) only one loan outstanding at a time or (2) no more than five loans outstanding at one time (but no more than one per calendar year). The option you choose will have an impact on the number of loans made from your plan. It will also have a direct impact on your payroll system. 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 repayment of a single loan.

**V. Length of loan**

In determining the maximum repayment period for residential loans, you should be mindful that the loan term may extend beyond the period the 457 participant is employed by you. If you allow employees to continue to pay their loans after they separate from service (see Section X, Acceleration below), repayments could continue to be made 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.

**X. Acceleration**

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

1. All loans are due and payable in full ("called") upon separation from service. The employee may not continue to pay off his/her loan once he/she separates from service.

2. After separation from service, all loans are called only when the participant withdraws his/her entire account balance.

3. After separation from service, all loans are called as soon as the participant takes a withdrawal of any amount from the plan.

You should consider these options carefully because a call provision could result in a taxable event for the participant. If a participant does not repay the outstanding loan amount when the loan is called, the loan is "foreclosed". This means that the outstanding loan amount will be reported by ICMA-RC as a taxable distribution to the participant 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).