The following comments are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

These comments were prepared by individual members of the Employee Benefits Committee of the Section of Taxation. Principal responsibility was exercised by Joni Andrioff, Mark Dray, Robin S. Lazarow, W. Waldan Lloyd, Mary M. Potter, Priscilla E. Ryan and Karen Suhre. Substantive contributions were also made by Dianne Bennett, Alden Bianchi, Deborah Grace, Steven Guise, Malcolm Hindin, Thomas A. Jorgensen, Barry Klein, Robert Louis, Michael Macris, Catherine Marriott, Pamela C. Scott, Thomas L. Shaevsky, Norma M. Sharara and Walter H. Wingfield. The comments were reviewed by Taina Edlund and Seth H. Tievsky of the Employee Benefits Committee, by Susan J. Daley on behalf of the Committee on Government Submissions, and by Stuart M. Lewis, Council Director for the Employee Benefits Committee.

Although many members of the Section of Taxation who participated in preparing these Comments have clients who would be affected by the federal tax principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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EXECUTIVE SUMMARY

These comments are in response to proposed U.S. Treasury Regulations under section 72(p) of the Internal Revenue Code of 1986, as amended (the "Code"), which were published in the Federal Register on July 31, 2000 (65 FR 46677) (the "Proposed Regulations"). Specifically, these comments address the following five aspects of the Proposed Regulations: (1) the requirement that a plan participant may obtain no more than two plan loans in a calendar year (or other twelve-month period consistently applied by the plan), (2) the requirement that a subsequent loan to a participant who has a defaulted loan must satisfy one of two additional conditions to be treated as a nontaxable loan, (3) the requirements regarding plan loan refinancings, (4) the requirement that plan administrators must continue to accrue interest on a defaulted loan solely for the purpose of determining whether the maximum loan amount has been exceeded, and (5) the requirements regarding the treatment of plan loans of participants who are performing services in the Armed Forces of the United States. For each of these aspects, the comments propose specific recommendations.

1. REQUIREMENT THAT A PLAN PARTICIPANT MAY OBTAIN NO MORE THAN TWO PLAN LOANS IN A CALENDAR YEAR (OR OTHER TWELVE-MONTH PERIOD CONSISTENTLY APPLIED BY THE PLAN)

The Proposed Regulations provide that a plan loan to a participant is to be treated as a deemed distribution if, during the calendar year (or other twelve-month period consistently applied by the plan) in which such loan is made, two or more plan loans have previously been made to such participant (the "Two Loan Limitation"). See Prop. Treas. Reg. § 1.72(p)-1, Q&A-20(a)(3). The "Explanation of Provisions" (the "Preamble") to the Proposed Regulations states that the purpose of the Two-Loan Limitation is to "ensure that additional loans are not used to circumvent the requirements of Section 72(p) . . .". In Example 3 of Proposed Regulation § 1.72(p)-1, Q&A-20, a participant takes out five plan loans in a calendar year, each of which satisfies all of the requirements set forth in section 72(p)(2) of the Code. Each loan, except for the first, was obtained for the purpose of repaying installments on the outstanding loans. It is apparent that this provision of the Proposed Regulations has been drafted because a participant
who obtains multiple loans merely to repay installments on an outstanding loan is perceived to be circumventing the requirements of Section 72(p) of the Code.

We urge that the Two Loan Limitation be omitted from the final regulations for the following reasons. First, while many plans impose limits on the number of loans outstanding for the purpose of controlling administrative costs, such plans may typically permit more than two outstanding loans at a time, without regard to whether they occur in the same calendar year or whether they are used to pay installments on outstanding loans. The Two Loan Limitation would require these plans to expend resources to reprogram their administrative systems and to reeducate plan participants. The Proposed Regulations do not contain any rationale for limiting the number of permitted loans in a year to two, and situations currently exist where participants legitimately have more than two plan loans outstanding.

Second, it may be argued that permitting subsequent loans for the purpose of repaying an outstanding loan is not an abuse. A participant may have a legitimate financial need to borrow from a plan to make payments on an outstanding loan. Nothing in section 72(p) suggests that Congress thought that a plan loan should be permitted for some purposes, but not others. In fact, Congress has previously addressed the issue of whether borrowing to repay an outstanding loan is permitted under Section 72(p). In 1986, Congress modified the $50,000 limitation contained in Section 72(p)(2) by requiring the $50,000 maximum amount to be reduced by the excess of the highest outstanding balance of loans from the plan during the one-year period ending on the day before the date the loan was made, over the outstanding plan loan balances on the date the loan was made.¹ See Tax Reform Act of 1986, P.L. 99-514 ("TRA '86"), § 1134(a). Congress's stated purpose in reducing the maximum amount was its concern that the $50,000 limit "did not prevent an employee from effectively maintaining a permanent outstanding $50,000 loan balance through the use of balloon repayment obligations and bridge loans from third parties." See Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, at 727-8 (May

¹ Prior to its amendment by the Tax Reform Act of 1986, section 72(p)(2) provided that a plan loan, when added to the outstanding balance of all other loans to a participant from all plans maintained by an employer, could not exceed the lesser of (i) $50,000, and (ii) the greater of $10,000 and 50% of the participant’s accrued benefit under the plan.
4, 1987) (the "TRA ’86 Blue Book"). In other words, Congress was aware that the existing statute permitted a permanent outstanding $50,000 loan balance, but declined to remedy its concern by prohibiting or limiting third-party bridge loans. Instead, it addressed its concern by merely reducing the maximum loan amount.

We believe that the Two Loan Limitation would run counter to the policy goal of encouraging employees to save for their retirement because such a limitation would encourage participants to seek hardship withdrawals or other permitted in-service withdrawals. Further, the Two Loan Limitation could cause plan participants initially to borrow more than they need. We believe the better policy is to permit participants to obtain an additional loan, which will be repaid and reinvested for retirement.

If the Treasury Department believes that the limitation on the maximum loan amount imposed by TRA ’86 does not adequately restrict a participant from maintaining a permanent outstanding loan, then we suggest the perceived problem could be better addressed by imposing a time limit on obtaining subsequent loans. For example, a participant who obtains two plan loans would not be entitled to obtain another plan loan until at least one or two quarterly periods have elapsed. Nevertheless, for various administrative reasons, it is our view that any limitation on the number of loans is unduly restrictive. At a minimum, it would be helpful if the Two Loan Limitation were restricted to those circumstances where the purpose of the subsequent loans is to repay installments on outstanding loan balances. Otherwise, a participant faced with a legitimate need to cover expenses (e.g., quarterly tuition payments or estimated tax payments) might be unduly limited by the Two Loan Limitation.

In the event that the Two Loan Limitation is included in final regulations, however, we point out that clarification will be needed as to whether the Two Loan Limitation would also apply to a short plan year. In addition, as many plans currently allow more than two outstanding loans, we recommend that all loans outstanding on the effective date of the final regulations be grandfathered.
2. REQUIREMENT THAT A SUBSEQUENT LOAN TO A PARTICIPANT WHO HAS A DEFAULTED LOAN MUST SATISFY TWO ADDITIONAL CONDITIONS TO BE TREATED AS A NON-TAXABLE LOAN.

The Proposed Regulations provide that if a plan participant who has a defaulted loan requests another loan, then any plan payment to the participant pursuant to the subsequent loan request would be treated as a taxable distribution rather than a nontaxable loan unless either (i) repayments of the new loan are to be made pursuant to a payroll withholding arrangement that is enforceable under applicable law, or (ii) the plan receives adequate security for the loan that is in addition to the participant's or beneficiary's accrued benefit under the plan. See Prop. Treas. Reg. § 1.72(p)-1, Q&A-19(b)(2). A loan which initially satisfies one of these two conditions, but later does not, is treated as a taxable distribution as of the date the condition is no longer satisfied (subparagraphs (i) and (ii) are the "Additional Requirements"). See Prop. Treas. Reg. § 1.72(p)-1, Q&A-19(b)(3).

As proposed, the result of the Additional Requirements may be to bar a participant who has a defaulted plan loan outstanding from again borrowing from the plan. If the sole reason the loan became taxable is the participant's failure to repay the loan, then this result may be justified. But if the reason the loan fails the exception from taxation is of a more technical nature (e.g., the plan administrator erroneously allowed more than 60 months to repay the loan), then the prohibition on a subsequent loan may not be justified. We suggest that if the Additional Requirements are included in final regulations, that they only apply to loans that are in default because of nonpayments.

The Additional Requirements may be impractical for some plans. With respect to the Additional Requirement for additional security outside the plan, many plans are not equipped to comply with the valuation and other standards applicable under Title I of ERISA respecting additional security. ERISA standards require appraisal or other verifiable valuation, adequate investigation of legal title and the authority of the participant to pledge the collateral, creation (and recording) of an enforceable security interest, and continued monitoring of the collateral throughout the loan term. See ERISA §§ 404(a)(1), 408(b)(1), Labor Reg. § 2550.408b-l(f). Many plans do not have the expertise to accomplish these tasks and may be disinclined to incur the expense of having them performed by a third party, even if such
expenses are chargeable to the plan. Further, we have anecdotal evidence that many third-party vendors are not currently able to hold or administer additional security outside of the plan.

Although the Additional Requirement that loan repayments be made pursuant to a payroll withholding arrangement that is enforceable under applicable law would be workable in many situations, such a requirement would not allow plans to continue a current common practice of permitting loan repayments by check. This practice is often employed by plans that utilize payroll withholding for active employees, but permit participants who are no longer on the payroll (e.g., who have terminated employment, who are on an unpaid leave of absence or who have transferred to a non-participating affiliate) to repay by check rather than forcing such persons, who often have limited resources, to default on their loans. This practice should be encouraged because it furthers the policy of encouraging qualified plan benefits to be used for retirement purposes.

Additionally, it is worth noting that the Additional Requirement of an enforceable payroll withholding arrangement only highlights the ERISA preemption issues surrounding these arrangements. Assuming that ERISA preempts state laws on payroll withholding (as the Department of Labor has opined with respect to the state of New York), a plan would be required at the time of the additional loan to determine the enforceability of the payroll withholding arrangement under ERISA. The plan would have to determine whether the law of the applicable federal circuit court (either where the plan is located or the participant is located) provides a federal common law rule as to the enforceability of such an arrangement (and to determine which state's law might be applied in such cases). If ERISA does not preempt state payroll withholding laws, then state law must be considered in any determination of the enforceability of a plan loan. Employers who operate in multiple states may find themselves unable to apply a single standard to determine compliance with the regulation if it is adopted in its proposed form.

2 See DOL Advisory Opinion 94-27A (July 14, 1994). Some states (notably, California) have announced they disagree with the Department of Labor's view on ERISA preemption.

3 Many state statutes which address procedures for payroll withholding make employer non-compliance a criminal act (typically, a misdemeanor). The extent of ERISA preemption over state criminal laws is questionable.
They may also struggle with which state law to apply, especially if the employer (or paymaster) is located in one jurisdiction, the plan in a second and the participant in yet a third. While plan administrators currently address these issues in administering payroll deductions in their on-going loan programs, the issue of enforceability typically arises only in limited circumstances, such as when an employee with an outstanding loan attempts to withdraw a payroll deduction authorization. By contrast, the Proposed Regulations require the plan administrator to determine the enforceability of a payroll authorization at the time of the loan.

Many plans have implemented electronic plan administration procedures, including telephone voice response systems and computer online elections. Many of these plans have included loan origination and administration in these electronic procedures, including electronic payroll withholding authorizations. Often these systems have presumed ERISA preemption of contrary state law withholding rules. The recent federal legislation on electronic signatures in commerce does not resolve all the issues for plans which use electronic administration procedures and does not address such matters as payroll withholding to repay loans obtained electronically. Although the Proposed Regulations do not create the uncertainty surrounding electronic plan administration procedures, they do highlight the need for clarification of this preemption issue.

In addition, a loan that satisfied one of the Additional Requirements at its inception could, without any fault or action on the borrower's part, later become taxable. For example, the value of additional collateral could suddenly decline due to market conditions. Moreover, the requirement for additional collateral would necessitate the establishment of new procedures for (i) periodic valuations of collateral, and (ii) informing participants whose loan collateral declined in value that additional collateral must be posted in order to avoid loan default.

As the above discussion regarding the "enforceable under applicable law" condition illustrates, a plan administrator could make a determination that the payroll withholding arrangement it established for a plan's loan program was enforceable, only later to discover that it applied the wrong law in making the determination.
For the reasons stated above, we recommend that the Additional Requirements be omitted from the final regulations under section 72(p). Plan administrators currently are free, consistent with their ERISA fiduciary duties, to adopt restrictions on subsequent loans to participants with defaulted loans. Plan administrators that experience numerous defaulted loans are more apt to restrict such loans than plan administrators who have experienced few defaulted loans. Any failure to implement plan-appropriate safeguards in this regard on the part of a plan administrator is redressable by an action for breach of fiduciary duty or under the prohibited transaction rules. We believe that the Department of Labor (the "DOL") has already addressed these concerns in the DOL regulations which require a plan administrator to take into account factors that are considered in a normal commercial setting, such as the borrower's creditworthiness and financial need. See DOL Reg. § 2550.408-1(b). Thus the DOL left to the fiduciary the ability to exercise its discretion in determining which factors are important for this purpose, rather than mandating specific additional factors. Under the DOL's formulation, the fiduciary takes into account particular factual situations, focusing on the participant's ability to repay.

If, however, the Treasury Department and the Internal Revenue Service continue to believe additional restrictions are necessary, our recommendation is that the regulations provide that participants with defaulted loans be required to repay subsequent loans exclusively by means of payroll deduction in accordance with the plan's payroll deduction procedures for other employees who have outstanding plan loans which are not in default. Alternatively, if the previous recommendations are not accepted, we would recommend a one-year waiting period with respect to a participant with a defaulted outstanding loan, as discussed in item 4 below.

3. **REQUIREMENTS REGARDING PLAN LOAN REFINANCINGS**

The Proposed Regulations provide that if a loan that satisfies section 72(p)(2) of the Code is replaced by a loan (a "replacement loan"), and the term of the replacement loan ends after the term of the loan (referred to as "the replaced loan" in the Proposed Regulation, but for clarity purposes is referred to herein as the "refinanced loan") it replaces, the replacement loan and the refinanced loan are both treated
as outstanding on the date of "the transaction", which is presumably the date on which the replacement loan is made. See Prop. Treas. Reg. § 1.72(p)-1, Q&A-20(a)(2). For purposes of the preceding sentence, the term of the refinanced loan is determined under its terms in effect immediately prior to the making of the replacement loan. Thus, for example, the replacement loan results in a deemed distribution if the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the refinanced loan, exceeds the amount limitation of section 72(p)(2)(A) of the Code. A replacement loan with a longer term than the refinanced loan would not be considered a deemed distribution if the replacement loan is, in effect, bifurcated into two loans, the principal amount of one which is equal to the balance due on the refinanced loan and with a term ending on the same date as the refinanced loan and the other loan in the principal amount equal to the difference between the amount of the replacement loan and the amount of the refinanced loan.

We recommend that the Proposed Regulations be revised to distinguish between a refinancing of a loan with a maximum five-year term and a loan with a shorter term. For example, assume that in January of 2002, a participant obtains a $10,000 loan, with a two-year term, from a 401(k) plan and the participant's account at the time of the loan is $20,000. After one year of monthly loan payments, the participant would have repaid principal in excess of the minimum amortization that would have been required if the loan term were five years, with quarterly payment periods. Assume that after one year of monthly repayments, the participant experiences a financial hardship and would like to reduce his loan payments. There is no statutory reason why the participant should be barred from spreading the remaining $10,000 due on the loan out over the next four years (with appropriate amounts amortized at least quarterly), so that the loan is repaid in full by January of 2007, the fifth anniversary of the original loan. The Proposed Regulations, however, appear to impede or prohibit this basic transaction by imposing a complicated double-counting principle merely because, in effect, the term of a loan is extended. The participant would be deemed to have borrowed $20,000 (the sum of the refinanced loan and the replacement loan), which may be more than half of the participant's total account balance, even though the participant really never borrowed more than $10,000 from his or her account.
While many plan sponsors allow multiple loans, as noted above, some plan sponsors limit participants to one outstanding loan at a time in order to simplify plan administration and reduce the expense of the plan loan program. These plan sponsors recognize that a participant with an outstanding loan may have a legitimate need to borrow additional funds from his or her account before the outstanding loan is fully repaid. The Proposed Regulations are burdensome for plans that limit participants to one loan at a time because the regulations in effect require dual amortization schedules on a single refinanced loan, a requirement that we believe such plans are not now programmed to handle.

We recommend that the Proposed Regulations not treat a participant who refinances an outstanding loan more restrictively than a participant in a plan that permits multiple loans. This is especially relevant for participants limited not by the $50,000 limit, but by the greater of one-half of their accrued benefit, or $10,000. For example:

In Plan A, each participant is allowed to have two outstanding loans at a time. Joe Smith has a total account balance of $40,000 and borrows $20,000, with a five-year repayment period, to pay his son's college tuition. Joe Smith repays $10,000 of the principal in regular monthly installments over the first two years of the loan term, and in the meantime, his total account balance grows to $50,000 due to additional contributions, interest payments on the loan, and other investment earnings. Joe Smith's mother then incurs large uninsured medical expenses, and he desires to take out another plan loan to assist her. Since one half of his current account balance is $25,000, and the outstanding balance of his current loan is $10,000, he can take out another loan, in a maximum amount of $15,000 with a five-year term.

In contrast, in Plan B, each participant is allowed to have only one outstanding loan at a time, as the employer's payroll system cannot accommodate two, and the 401(k) plan recordkeeper charges high fees for handling additional loans. The payroll system and 401(k) plan recordkeeping system likewise cannot handle a dual amortization schedule. Jane Allen has a total account balance of $40,000 and borrows $20,000 for her son's college tuition, repaying $10,000 of the principal in regular monthly installments over the first two years, just as Joe Smith did in Plan A, and her total account likewise grows to $50,000 in the meantime. However, when Jane needs to borrow another $15,000 to cover her mother's medical expenses, she must refinance her existing loan, rather than taking a second loan, because Plan B only allows one loan at a time. While Jane should logically be able to borrow another $15,000, to be repaid over the full five-year maximum loan term, just as Joe can, the Proposed Regulations would limit her additional borrowing. The Proposed Regulations would treat the $10,000 balance of the refinanced loan as still outstanding on the date of the refinancing, so that the total amount deemed borrowed would be $35,000, exceeding the limitation of one-half of her account balance. Accordingly, Jane could only borrow an additional $5,000 for more than three years to cover her mother's medical expenses, versus Joe's ability to borrow an additional $15,000—even though their situations are identical.
Further, it should be noted that, from an administrative perspective, an employer will experience difficulties under the Proposed Regulations if it converts its payroll system from a bi-weekly payroll, with 26 payrolls per year and plan loan repayments taken out of every payroll, to a semi-monthly payroll, with 24 payrolls per year, and plan loan repayments also taken out of every payroll. Such an employer may reamortize all of the outstanding plan loans to increase slightly each semi-monthly payment to make up for the two fewer payrolls over the course of each year. However, the final maturity of most loans may be extended for a few days or perhaps a week, because the semi-monthly payroll falls later in the month than the old bi-weekly payday in most cases. The Proposed Regulations would apply to this situation as well, even though there was only a *de minimis* change in payment dates for perfectly valid business reasons, and there was no increase in the amount borrowed.

If restrictions are to be included on plan loan refinancings in final regulations, then we recommend that they be modified for plans that allow only one loan outstanding to any participant and to permit exceptions for payroll and other computer systems changes.

4. **REQUIREMENT THAT PLAN ADMINISTRATORS MUST CONTINUE TO ACCRUE INTEREST ON A DEFAULTED LOAN SOLELY FOR THE PURPOSE OF DETERMINING WHETHER THE MAXIMUM LOAN AMOUNT HAS BEEN EXCEEDED.**

The Proposed Regulations provide that interest accrues on a loan following a deemed distribution for purposes of determining the maximum amount of any subsequent loan to the participant. *See* Prop. Treas. Reg. § 1. 72(p)-1, Q&A-19(b)(1). Consistent with the final regulations which provide that actual interest accruals cease following a "deemed distribution" for purposes of section 72(p)(1) of the Code, we urge reconsideration of this proposal. To continue interest accruals solely for the purpose of determining the applicable amount limit with respect to future loans adds unnecessary complexity which appears to outweigh the policy reasons underlying the proposal.

As an alternative to requiring additional interest accruals for this limited purpose, we urge for a reconsideration of Q&A-13(b) of section 1.72(p)-1 of the final regulations, which provides that "the amount of the account balance that is offset against the loan is an actual distribution . . ., not a deemed
distribution. . . " Specifically, we ask that the offset not be considered an actual distribution, but instead that the defaulted amount be considered a "frozen asset" of the borrowing participant which is unavailable for any purpose under the plan until the amount of the defaulted loan is repaid or until the excess of the participant's accrued benefit over the defaulted amount is distributed. Such an approach permits a plan to foreclose on its security without reducing the participant's accrued benefit until the accrued benefit is actually distributed. The requirement that a loan be treated as a distribution for the purposes of section 72(p) of the Code but not for section 401(k) was explicitly recognized at the time section 72(p) was enacted. Further, this alternative provides a real incentive for participants not to default on loans that are valid in the first instance. Our proposal also would eliminate the artificial inconsistencies between the existing DOL and Treasury plan loan regulations.

For example, assume for purposes of illustration that a participant with a $100,000 account balance borrows $50,000 for a term of five years at a market rate of interest. Fifty percent of the account is pledged as security for the loan. The participant's account is credited with a note in the amount of $50,000 and $50,000 of invested assets. Further assume the loan is in default before any portion of the loan is repaid and before any additional contributions are made to the participant's account. Upon default, the account holds $50,000 of invested assets and a worthless note. Taxed, distributed or not, the account is now worth $50,000 and the participant has consumed an economic benefit of $50,000. Deeming a distribution for tax purposes and deferring execution on the $50,000 security does not change the economic reality – the participant has an account valued at $50,000. It is submitted that once a "deemed distribution" has been made that there is no further or actual distribution to be made and that the

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4 The legislative history to section 72(p) states:

Although the bill changes the tax treatment of certain plan loans, the bill does not modify the tax-qualification standards of the Code for pension, profit-sharing, or stock bonus plans or the non-Code rules of ERISA. For example, the tax qualification of a plan is not adversely affected merely because an amount is treated as distributed to [a] participant under the provision at a time when the plan is not permitted to make a distribution to the participant.

policy and integrity of sections 401(a), 401(k)(2)(B) and 403(b)(11) of the Code will not be undercut by fashioning a regulatory provision that allows the plan to execute on security at the time of the deemed distribution. The simplification of the rules to align them with their practical effect on the participant who has the defaulted loan justifies consideration of our proposal.

If this proposal is not accepted, we suggest that it is preferable from an administrative standpoint to preclude a participant who defaults on a loan from taking another loan for a period of time, perhaps one year, from the end of the term of the defaulted loan. Our proposal, and our alternative suggestion, would discourage defaults while furthering the underlying policy objective of simplifying the rules and plan administration.

5. REQUIREMENTS REGARDING THE RIGHTS OF PARTICIPANTS ON MILITARY LEAVE

The Proposed Regulations explain how the exception to the level amortization requirement applicable to plan loans applies to plan loan repayments that have been suspended for participants in the military service. The general rule regarding level amortization is set forth in the final regulations contained in Treasury Regulation § 1.72(p)-1, Q&A-9(a) (the "Final Regulations") as follows:

The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u)), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. (Italics added.)

Subsection (b) of Q&A-9 of the Final Regulations simply references section 414(u)(4) of the Code for special rules relating to military service.

The Proposed Regulations provide that, in the case of a participant who is absent from work due to military service, the suspension of loan repayments can occur for a period longer than one year and that the term of the loan can be extended beyond the original term end to include the period of military service. Prop. Treas. Reg. § 1.72(p)-1, Q&A-9(b).

In many cases, an employer supplements the military pay of an employee who is on military leave. These employer supplements may bring the participant's aggregate pay up to the pre-leave level or
may provide only a partial subsidy to the participant's military service pay. In view of the fact that the Uniformed Services Employment and Reemployment Rights Act of 1994 and section 414(u) of the Code do create special rights for plan participants on military leave, we request that the Proposed Regulations address situations in which employers make supplemental payments to their employees on military leave. We recommend that the final version of Q&A-9(b) state that a serviceperson's plan loan repayments could be suspended and the term of the loan extended as permitted under the Proposed Regulations despite the fact the serviceperson receives periodic supplemental pay from his or her employer, even if such pay is greater than the loan installment amount. Alternatively, we recommend that the final regulations provide that the military suspension provision in the Proposed Regulations does not apply only if the serviceperson's (i) periodic supplemental pay, together with his or her periodic military pay, is at least equal to his or her periodic pre-military pay from the employer and (ii) periodic supplemental pay is at least equal to the loan installment amount.