Qualified Retirement Plan

& 403(b) Loan Kit

INSTRUCTIONS FOR USING THE QUALIFIED RETIREMENT PLAN/403(b) LOAN KIT

This *Qualified Retirement Plan/403(b) Loan Kit* is designed for use with qualified retirement plans and 403(b)s that offer loan programs. Your Plan documents must specifically provide that a loan program is available under the Plan you have adopted. This loan kit is not intended to serve as an amendment authorizing a loan program under plans which otherwise do not provide for loans. Rather, it may be used only with plan documentation that independently authorizes implementation of a loan program.

This loan kit contains documents required under the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations and the Internal Revenue Code (IRC). If more than 25 loans were made from the plan in the prior or current year a *Truth In Lending Disclosure Statement* must be prepared and given to a successful applicant. You should consult with your legal advisor to determine the extent to which additional documentation, if any, is necessary to lawfully administer your loan program.

This loan kit contains the forms that must be completed by the Plan Loan Administrator and applicants seeking loans from the Plan. These forms include the following:

- *Loan Application*
- *Truth In Lending Disclosure Statement*
- *Loan Agreement*
- *Qualified Retirement Plan/403(b) Loan Summary* — A general explanation of qualified retirement plan and 403(b) loan rules including taxation issues and other operational concerns.

To process a loan, the following steps must be completed.

STEP 1: Complete the *Loan Application*

To initiate a loan from the Plan, an applicant must obtain and complete a *Loan Application*. Once the applicant has completed and signed the *Loan Application*, it must be provided to you for review.

STEP 2: Approve or Deny the *Loan Application*

You must make a determination under the loan approval requirements contained in your *Loan Information Sheet* whether the loan will be approved or denied.

If you approve the loan, sign the *Loan Application*. If you deny the loan, you must notify the applicant in writing of the denial and the reasons for denial. Notification of denial may be accomplished by completing the last portion of the *Loan Application* and providing a copy to the applicant.

If the applicant is married, the spousal consent acknowledgement must generally be signed by the applicant's spouse not more than 90 days before disbursement of loan proceeds.

STEP 3: Complete the *Loan Agreement*

If you approve the loan, complete a *Loan Agreement*, and provide a copy to the loan recipient for his or her signature.

STEP 4: Complete the *Truth In Lending Disclosure Statement*

A loan program is subject to the Truth in Lending requirements for the current year if more than 25 loans were made in the prior year. If 25 or fewer loans were made in the preceding year, all loans in excess of 25 issued during the current year will be subject to the Truth in Lending requirements. If you approve the loan and the Truth in Lending requirements apply, you must complete the *Truth in Lending Disclosure Statement* and provide a copy to the loan recipient.

NOTE: *This loan agreement requires repayment by payroll deduction as long as a loan recipient is employed by you. If state law applies to your loan program, you must determine whether irrevocable payroll authorizations are permitted in your state. If you have questions, please consult with your legal advisor.*

NOTE: *All original documents should be retained by the Plan Loan Administrator and copies given to the applicant/borrower.*

QUALIFIED RETIREMENT PLAN/403(b) LOAN SUMMARY

Requirements

Generally, all distributions from qualified retirement plans and 403(b)s are subject to income taxation. Loans from qualified retirement plans and 403(b)s represent one exception to this general rule. However, to ensure that qualified retirement plan or 403(b) loan proceeds are not characterized as taxable income to loan recipients, plan loan programs must satisfy two sets of requirements. First, the loan cannot be classified as a "prohibited transaction" under Sections 4975 of the Internal Revenue Code (IRC) and 406 of ERISA. Second, the loan amount must not exceed prescribed limits under IRC Section 72.

Prohibited Transactions (IRC Section 4975 / ERISA Section 406)

Loan proceeds will be subject to a 15% penalty tax (and, if not corrected in a timely manner, a 100% penalty tax) unless the Plan's loan program and / or an individual loan, as the case may be, meets the following requirements.

1. Loans must be made available to parties in interest on a reasonably equivalent basis.
2. Loans must not be made available to highly compensated employees in an amount greater than the amount available to other employees.
3. All loans must be made in accordance with the specific provisions set forth in the Plan (i.e., *Loan Information Sheet*).
4. All loans must bear a reasonable rate of interest.
5. All loans must be adequately secured.

Maximum Loan Balance (IRC Section 72)

If a qualified retirement plan loan recipient receives loan proceeds in excess of the limits prescribed below, or in violation of the loan terms prescribed below, the loan proceeds will be includable in income and the recipient may be subject a 10% penalty tax on such amount. Under IRC Section 72(p) and (t), qualified retirement plan loan proceeds are taxable to the extent such proceeds, when added to the outstanding balance of all other loans from the Plan to the recipient, exceed the lesser of

(1) $50,000 reduced by the highest outstanding balance of loans from the Plan during the 12 month period ending on the day before the date upon which the loan was made, or

(2) the greater of one-half of the present value of the nonforfeitable accrued benefit of the recipient under the plan or $10,000.

This maximum loan test can be demonstrated by the following mathematical equation.

EXAMPLE: A successful applicant may borrow the lesser of A or B.

A = $50,000 - HOB
B = the greater of x or y
x = (.5 x NAB) - OB
y = $10,000 - OB

OB is the current outstanding balance of any loans to the applicant.

HOB is the highest outstanding balance of any loans made from the Plan to the applicant during the preceding 12 month period ending on the day before such loan is to be made.

NAB is the current nonforfeitable accrued benefit of the applicant.

EXAMPLE: On January 1, 2003, Ann received a $15,000 loan from her employer's Plan. One year later, on January 1, 2004, Ann's outstanding balance (OB) on her loan is $10,000 and her nonforfeitable accrued benefit (NAB) in the Plan is $35,000. The maximum amount Ann is eligible to borrow from the Plan on January 1, 2004, may be determined by applying the above formula.

STEP 1: Determine A

A = $50,000 - HOB
= $50,000 - $15,000
= $35,000

STEP 2: Determine B

B = greater of x or y

x = (.5 x NAB) - OB	y = $10,000 - OB
= (.5 x $35,000) - $10,000	= $10,000 - $10,000
= $17,500 - $10,000	= $0
= $7,500	**= $7,500**

NOTE: B = the greater of x or y In this example, x = $7,500 and y = 0. Therefore, B = $7,500.

STEP 3: Compare A and B

A = $35,000
B = $7,500

Recall, the maximum additional amount which Ann may borrow from her employer's Plan, as of January 1, 2004, is the lesser of A or B. In this example, A = $35,000 and B = $7,500. **Therefore, as of January 1, 2004, Ann is eligible to borrow an additional $7,500 from her employer's Plan.**

All the loans must be repaid in substantially equal amounts on not less than a quarterly basis over the term of the loan. Generally, the term of the loan cannot exceed five years. An exception to the five year pay-back rule exists for plan loans used to purchase principal places of residence for loan recipients.

Operational Concerns

Spousal Consent - Generally, any loan which uses the recipient's vested account balance to secure repayment of the loan requires spousal consent. A spousal consent provision is found on the *Loan Application* and the *Loan Agreement*. This consent must generally be obtained more than 90 days prior to disbursement of loan proceeds. Each employer must review its Plan document to determine if the consent requirement applies to its Plan.

Default - If a loan recipient fails to make payments in a timely manner, the *Loan Agreement* provides that the entire balance shall be accelerated and become due and payable. Nonetheless, the Plan Loan Administrator cannot commence any action to foreclose its interest in the recipient's vested account balance until the recipient experiences a distribution triggering event as prescribed under the Plan. The Plan documents must be reviewed to determine the events necessary to trigger a distribution under each employer's Plan.

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LOAN APPLICATION

PURPOSE: This form is completed and provided by loan applicants to their employer or former employer for approval.

GENERAL INFORMATION

Application Date____________________________

Borrower Name ____

Social Security Number____

Address ____

Telephone Number *(Home)*__________________________________ *(Work)*______________________________

Plan Name____

LOAN REQUEST INFORMATION

☐ Yes ☐ No Is this a new loan request?

☐ Yes ☐ No Is this a renewal, modification or renegotiation of an existing qualified retirement plan or 403(b) loan?

If so, list the date of original loan. ____

☐ Yes ☐ No Will the loan be used to purchase your primary residence?

Amount of loan request ____

The maximum amount you may request is generally one-half your vested benefit or $50,000, whichever is less.

Term of requested loan ____

The maximum term is five years unless the loan is used to purchase your primary residence.

For value received the borrower promises to make repayments in the amount and term specified in this *Loan Application* and in accordance with the related *Loan Agreement*.

Borrower Signature ____ Date____________________

Spouse Signature ____ Date____________________

Subscribed and sworn to before me, a Notary Public / Plan Representative, this __________ day of __________________________.
(month/year)

Notary Public / Plan Representative Signature______________________________ Commission Expiration Date_____________

Give the completed request to your Employer for approval of the loan request. Any changes to the preprinted application could result in a delay in processing time.

Subject to the terms set forth in this *Loan Application* and related *Loan Agreement*, upon execution of this Application the Employer shall advance to the Borrower the amount specified.

PLAN LOAN ADMINISTRATOR USE ONLY:

☐ The loan is approved as follows:

Payment Amount ____

Interest Rate ____

Repayment Start Date ____

***If not completed by the Plan Loan Administrator, the repayment start date will be the next reasonable payroll date following the processing of the loan.**

☐ The loan is denied due to

- ☐ Amount requested exceeds maximum allowable
- ☐ Minimum loan amount has not been met
- ☐ Other *(specify)* ____

Plan Loan Administrator or Employer Signature ____________________________________ Date____________________

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TRUTH IN LENDING DISCLOSURE STATEMENT

PLAN NAME ____

In compliance with the Federal Truth In Lending Act (U.S. Code, Title 15, Section 1601 et. seq.), the following disclosures concerning my Plan loan are provided by the Plan Loan Administrator. Disclosures reflect the amounts I will pay if payments are made exactly as agreed.

ANNUAL PERCENTAGE RATE: The cost of my loan as a yearly rate.	**FINANCE CHARGE:** The dollar amount (interest and loan fees) the credit will cost me.	**AMOUNT FINANCED:** The amount loaned to me.	**TOTAL PAYMENTS:** The amount I will have paid after making all payments as scheduled.
_____________ %	$ _______________	$ _______________	$ _______________

My payment schedule will be:

NUMBER OF PAYMENTS	**AMOUNT OF PAYMENTS**	**PAYMENTS DUE**
_____________	$ _____________	__________, beginning _____________ *(state frequency)* *(month/day/year)*

SECURITY: I am pledging and assigning a portion of my vested account balance under the Plan as collateral to secure repayment of this loan.

PREPAYMENT: If I repay the loan early, there is no penalty.

ITEMIZATION OF AMOUNT FINANCED: All amounts will be distributed to the Borrower.

DEMAND: This obligation has a demand feature. This means in certain circumstances the loan must be repaid immediately.

NOTE: The *Loan Application*, *Loan Information Sheet* and *Loan Agreement* provides additional information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.

Qualified
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In consideration for the mutual covenants and agreements contained on the *Loan Application*, the Employer and the Borrower named on the *Loan Application* mutually agree as follows.

1. **Definitions.** For purposes of this *Loan Agreement* (hereinafter referred to as **AGREEMENT**), the following terms shall have the meaning set forth below.

   1.1. Borrower. A party-in-interest, as defined under Section 3(14) of the Employee Retirement Income Security Act of 1974 (ERISA), who otherwise qualifies for a loan under this loan program.

   1.2. Employer. The Employer sponsoring the Plan.

   1.3. Indebtedness. The outstanding principal and interest balance owned at any time under this **AGREEMENT**. The total Indebtedness includes, but is not limited to, the following: principal, interest and late fees.

   1.4. Internal Revenue Code. The Internal Revenue Code of 1986 and amendments thereto.

   1.5. Plan. The Qualified Retirement Plan or 403(b) maintained by the Employer.

   1.6. Vested Account Balance. The value of the **BORROWER'S** accumulated benefits which are nonforfeitable.

2. **Repayment.**

   2.1 Prepayment. The **BORROWER** shall have the right to prepay without penalty all or a portion of the outstanding Indebtedness at any time.

   2.2. Maximum Loan Amount. At origination, the maximum amount of Indebtedness under this **AGREEMENT** shall not exceed the lesser of one-half the **BORROWER'S** Vested Account Balance or $50,000 (reduced by the highest outstanding loan balance during the 12-month period ending on the day before the date this **AGREEMENT** becomes effective). For purposes of determining the overall limit, all loans from all qualified retirement plans or 403(b)s of the Employer or its related employers described in Section 414(b), (c) and (m) of the Internal Revenue code shall be aggregated with the loan account balance.

   2.3. Loan Account. A loan account will be established and maintained for the **BORROWER** in accordance with this paragraph. The Employer shall debit to the loan account the principal amount of Indebtedness of the loan advanced to the **BORROWER** under this **AGREEMENT**. The Employer shall credit to the loan account all payments made on account of the Indebtedness by the **BORROWER**. Credit shall be applied first to accrued interest and then to principal.

   2.4. Loan Payment - Payroll Deduction. Payments made by the **BORROWER** shall be made through payroll deduction while the **BORROWER** is employed by the Employer. The **BORROWER** authorizes the Employer to withhold the proper repayment amount from wages received each pay period until the loan is completely repaid.

3. **Security for Repayment.** To secure repayment of the Indebtedness of the **BORROWER** to the Plan and any extensions, renewals, refinancing, modifications or replacements thereof, the **BORROWER** grants the Plan a security interest in the original amount of the principal, expressed as a percentage of the **BORROWER'S** Vested Account Balance under the Plan.

4. **Representations and Warranties of BORROWER.** The **BORROWER** represents and warrants that the **BORROWER** has furnished the Employer complete and correct copies of the written and signed consent of the **BORROWER'S** spouse providing authorization for the loan (if applicable), such consent having been provided not more than 90 days prior to the effective date of this **AGREEMENT**.

5. **Default.** The **BORROWER** shall be deemed in default if any one or more of the following events of default shall occur.

   5.1. The **BORROWER** fails to make payment on time or in the amount due pursuant to the provisions of Section 2 above.

   5.2. The **BORROWER** fails to keep any other promise made or obligation incurred under the terms of this **AGREEMENT**.

   5.3. The **BORROWER** terminates employment (unless the **BORROWER** continues to be a party-in-interest as defines under section 3(14) of ERISA).

   5.4. Other ______________________________

6. **Results of Default.** Upon default by the **BORROWER**, the Employer shall be entitled to take such actions as prescribed by law including, but not limited to, the following:

   6.1. Immediate Taxation. In the event a default results in a deemed distribution pursuant to IRC Sec. 72(p), the outstanding loan balance and any outstanding interest will be immediately taxable to the **BORROWER**. The Employer will issue an IRS Form 1099-R to the **BORROWER** indicating the taxable amount to be repaid.

   6.2. Payment. After a loan is considered in default, it is still considered to be outstanding until a loan offset occurs. The Employer must make reasonable efforts to collect the loan amount.

   6.3. Foreclosure. Employer shall be entitled to foreclose its interest in the **BORROWER'S** Vested Account Balance upon the occurrence of a distribution triggering event, as defined in the Plan.

I acknowledge that I have read and understand the *Loan Application*, *Loan Agreement*, and *Truth In Lending Disclosure Statement* and that I have received a completed copy of each of these forms.

Borrower's Signature ______________________________ Date______________

Borrower's Name (Typed or Printed)______________________ Borrower's Social Security Number______________

Spouse's Signature______________________________ Date______________