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Proposed Regulations Issued On Extended Rollover Period For Qualified Plan Loan Offset



The IRS has issued proposed regulations related to the extended rollover period for a qualified plan loan offset amount. The details of the proposed regulations, as reported by Checkpoint of Thomson Reuters, is detailed

below. Plan sponsors and administrators should reach out to their service providers and third-party administrators to understand how the proposed regulations will be implemented and qualified plan loan offsets will be reported on Form 1099-R.

Background. An eligible rollover distribution from a qualified plan must generally be rolled over within 60 days after receipt to be excluded from income, under the Code Sec. 402(c)(1) tax-free rollover rule.

In general, unless specifically provided for in Reg. §1.402(c)-2, Q&A-4(b), an eligible rollover distribution is any amount distributed to an employee (or spousal distributee) from a qualified plan. (Reg. §1.402(c)-2, Q&A-3)

A distribution of a plan loan offset amount (defined below) is an eligible rollover distribution if it satisfies Reg. §1.402(c)-2, Q&A-3. Thus, an amount not exceeding the plan loan offset amount may be rolled over by an employee (or spousal distributee) to an eligible retirement plan within the 60-day period. (Reg. §1.402(c)-2, Q&A-9(a))

For purposes of Code Sec. 402(c), a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). (Reg. §1.402(c)-2, Q&A-9(b))

Section 13613 of the [Tax Cut and Jobs Act](#) (TCJA, PL 115-97)

amended Code Sec. 402(c)(3) to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts (defined below). Any portion of a QPLO amount (up to the entire QPLO amount) may be rolled over into an eligible retirement plan by the individual's tax filing due date (including extensions) for the taxable year in which the offset occurs. (Preamble to Prop Reg REG-116475-19)

In addition, taxpayers who filed their 2019 tax returns by July 15, 2020 (the postponed tax return deadline granted in Notice 2020-18, 2020-15 IRB 592, due to COVID-19), have until October 15, 2020, to roll over all or any portion of a QPLO amount to an eligible retirement plan. (IRS website: [Filing and Payment Deadlines Questions and Answers](#))

A QPLO amount means a "plan loan offset amount" which is treated as distributed from a qualified employer plan to a participant or beneficiary solely by reason of:

1. The termination of the qualified employer plan; or
2. The failure to meet the repayment terms of the loan from the plan because of the participant's "severance from employment." (Code Sec. 402(c)(3)(C)(ii))

For QPLO purposes, the Code defines a "plan loan offset amount" as the amount by which the participant's accrued benefit under the plan is reduced in order to repay a loan from the plan. (Code Sec. 402(c)(3)(C)(iii))

The Code does not define "severance from employment" for QPLO purposes. But it does define it for other retirement plan purposes. Reg. §1.401(k)-1(d)(d) says that an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains such plan with respect to the employee. For example, a new employer maintains a plan with respect to an employee by

continuing or assuming sponsorship of the plan or by accepting a transfer of plan assets and liabilities (within the meaning of Code Sec. 414(l)) with respect to the employee.

In addition, for QPLO purposes, the plan loan offset amount must meet the plan loan limitation requirements of Code Sec. 72(p)(2). (Code Sec. 402(c)(3)(C)(iv))

A “qualified employer plan” is defined under Code Sec. 72(p)(4), which describes the types of plans subject to the plan loan distribution rules. (Code Sec. 402(c)(3)(C)(v))

Proposed regs. The proposed regs confirm that a qualified plan loan offset (“QPLO”) would be a type of plan loan offset as defined under Reg. §1.402(c)-2, Q&A-9(b). (Prop Reg §1.402(c)-3(a)(2)(i))

Further, the proposed regs would adopt the definition of “plan loan offset” as it appears in Reg. §1.402(c)-2, Q&A-9(b). (Prop Reg §1.402(c)-3(a)(2)(iii)(A))

Accordingly, the Preamble to the prop regs says that most of the general rules relating to plan loan offset amounts would apply to QPLO amounts. For example, the rule that a plan loan offset amount is an eligible rollover distribution would apply to a QPLO amount. In addition, the rules in Reg. §1.401(a)(31)-1, Q&A-16 (guidance concerning the offering of a direct rollover of a plan loan offset amount), and Reg. §31.3405(c)-1, Q&A-11 (guidance concerning special withholding rules with respect to plan loan offset amounts), applicable to plan loan offset amounts in general, would apply to QPLO amounts. (Preamble to Prop Reg REG-116475-19)

The proposed regs clarify that a plan loan offset amount would be a QPLO amount only if the plan loan offset amount relates to a plan loan that met the requirements of Code Sec. 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable. (Prop Reg §1.402(c)-3(a)(2)(iii)(B)(2))

The proposed regs would adopt the Code Sec. 402(c)(3)(C)(v) definition of qualified employer plan. (Prop Reg §1.402(c)-3(a)(2)(iii)(C))

For QPLO purposes, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under Reg. §1.401(k)-1(d)(2). (Prop Reg §1.402(c)-3(a)(2)(iv)(A))

In addition, a plan loan offset amount would be treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the plan loan repayment terms because of severance from employment if the plan loan offset:

1. Relates to a failure to meet the repayment terms of the plan loan, and
2. Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date ("12-month rule"). (Prop Reg §1.402(c)-3(a)(2)(iv)(B))

Form 1099 Reporting Impact

The IRS says that, with regards to Prop Reg §1.402(c)-3(a)(2)(iv)(B), whether a plan loan offset amount is a QPLO amount is relevant to plan administrators because those administrators are responsible for reporting whether a distribution is a plan loan offset amount or a QPLO amount on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and furnishing that form to the taxpayer. The Instructions to the 2020 Form 1099-R provide that if an employee's accrued benefit is offset to repay a loan (a plan loan offset amount), the administrator should report the distribution as an actual distribution and not use Code L (for deemed distributions) in box 7. For a QPLO amount, the instructions to the 2020 Form 1099-R provide that the administrator should enter Code M (for QPLO amounts) in box 7.

The IRS anticipates that the proposed 12-month rule will assist plan administrators in identifying QPLO amounts by providing a bright-line rule for determining whether a plan loan offset amount following a severance from employment is a QPLO amount. (Preamble to Prop Reg REG-116475-19)



Applicable date. The proposed regs would be applicable to plan loan offset amounts, including QPLO amounts, treated as distributed on or after the adoption of these rules as final regs in the Federal Register. (Prop Reg §1.402(c)-3(b)(2))



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