The SPARK Institute, Inc.
SHAPING AMERICA'S RETIREMENT

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April 18, 2017

Internal Revenue Service
CC:PA:LPD:PR (REG-131643-15)
1111 Constitution Avenue N.W.
Washington, DC 20224

Re: Proposed Changes to the Definitions of QMACs and QNECs

Dear Sir or Madam:

The SPARK Institute, Inc. appreciates the opportunity to comment on the changes being proposed to the definitions of qualified matching contributions ("QMACs") and qualified non-elective contributions ("QNECs"), published by the Department of the Treasury and the Internal Revenue Service ("the Agencies") in the Federal Register on January 18, 2017.[1] SPARK supports the Agencies' proposed changes because we believe that those changes will help simplify plan administration and reduce the costs associated with offering employer-sponsored retirement plans.

The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third-party administrators, trade clearing firms and benefits consultants. Collectively, our members serve approximately 85 million employer-sponsored plan participants.

Background. The Treasury Regulations' current definitions of QMACs and QNECs require QMACs and QNECs to be nonforfeitable "when they are contributed to the plan" (or "at the time the contribution is made").[2] The Agencies have interpreted this requirement to mean that QMACs and QNECs must be nonforfeitable when the amounts are initially contributed to a plan for the benefit of any participant. Accordingly, the Agencies have taken the position that QMACs and QNECs cannot be allocated out of a plan's forfeiture account because those accounts are inherently composed of forfeited benefits, and thus would have been subject to a vesting schedule when first contributed to the plan. Because of this interpretation, most plans do not permit QMACs and QNECs to be funded through a plan's forfeiture account.

The Agencies' proposed changes would amend the current definitions of QMACs and QNECs to clarify that QMACs and QNECs must only be nonforfeitable when they are *allocated*

[1] 82 Fed. Reg. 5,477 (Jan. 18, 2017).

[2] Treas. Reg. section 1.401(k)-6; Treas. Reg. section 1.401(m)-5.

to plan participants' accounts, rather than when they are first contributed to a plan. In short, this proposed change makes clear that QMACs and QNECs can be funded through a plan's forfeiture account.

The SPARK Institute supports the Agencies' proposed changes. We applaud the Agencies for responding to the industry's longstanding suggestion to address this issue. The proposal is a reasonable measure that will help simplify plan administration and reduce the costs associated with offering an employer-sponsored retirement plan. Because plan sponsors will clearly be permitted to use the amounts held in their plans' forfeiture accounts to fund QMACs and QNECs, they will no longer be required to make additional contributions to achieve the same result. This flexibility will make it easier for plans to comply with the Internal Revenue Code's nondiscrimination requirements and generally make plan sponsorship more attractive.[3] Accordingly, we support the changes being proposed by the Agencies.

The Agencies should also make clear that preapproved plans can take advantage of the proposed changes when finalized. We understand from SPARK Institute members that offer preapproved (M&P and volume submitter) plan documents that the Internal Revenue Service (the "Service") has been unwilling to approve any plan document that allows forfeitures to be used to fund QMACs and QNECs, including during the last round of opinion and advisory letters. After the Agencies issue final regulations allowing forfeitures to fund QMACs and QNECs, preapproved plan sponsors will likely wish to amend their plans immediately to reflect this new interpretation. Because of the Service's prior position, it is important that the Agencies publicly affirm that preapproved plans may be amended before the end of the next remedial amendment period to reflect this new position. (This could be done in the preamble to the final regulation or other announcement.)

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The SPARK Institute appreciates the opportunity to provide these comments to the Agencies. If the Agencies have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP (mlhadley@davis-harman.com or 202-347-2210).

Sincerely,

Tim Rouse
Executive Director

[3] The President issued on January 30, 2017 an executive order that, among other things, requires agencies to control the cost of regulations. We do not express a view on whether this regulation is covered by the President's executive order. But regardless, we believe that this regulation will *reduce* regulatory burdens on plans and plan sponsors.