The SPARK Institute, Inc.
SHAPING AMERICA'S RETIREMENT

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January 14, 2019

Internal Revenue Service
CC:PA:LPD:PR (REG-107813-18)
1111 Constitution Avenue NW
Washington, DC 20224

Re: REG-107813-18, Proposed Regulations Interpreting Hardship Distribution Changes

Dear Sir or Madam:

The SPARK Institute, Inc. appreciates the opportunity to comment on the proposed hardship distribution regulations published by the Department of the Treasury ("Treasury") and Internal Revenue Service ("IRS") in the Federal Register on November 14, 2018.

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. The vast majority of hardship distributions are processed by SPARK Institute members.

The SPARK Institute commends Treasury and IRS for proposing regulations that generally give retirement plan administrators flexibility in choosing how to design and administer hardship distributions in light of recent legislative changes, and that provide additional time for compliance. For example, the SPARK Institute supports the delayed applicability date for eliminating the requirement to suspend participant contributions following a hardship distribution and the provisions clarifying that plan administrators are not required to expand hardship distributions beyond elective deferrals or to employees who have not received all available plan loans.

Nevertheless, the SPARK Institute has also identified provisions in the proposed regulations that require additional clarification. A full summary of those issues is offered below. ***The most urgent matter, however, arising out of the proposed hardship distribution regulations is the need for Treasury and IRS to clarify that plan administrators can rely on the proposed regulations before they are finalized.*** Although a section header in the preamble to the proposed regulations refers to "Reliance," the proposed regulations do not explicitly state that plan administrators can rely on them before they are finalized. For similar proposals, it is routine that the preamble will explicitly state that plan administrators can rely on the proposed regulations until they are finalized, and if and to the extent that final regulations are more restrictive than proposed, the final regulations will be applied without retroactive effect. Because of this inconsistency, the SPARK Institute strongly encourages Treasury and IRS to publicly clarify without delay that plan administrators can rely on the proposed regulations. Any such guidance should cover not only the recent legislative changes affecting hardship distributions, but also the preamble's discussion of special disaster relief for victims of Hurricanes Florence and Michael, which is modeled on IRS Announcement 2017-15.

I. EVENTS DEEMED TO CREATE IMMEDIATE AND HEAVY FINANCIAL NEED

The proposed regulations would amend the list of regulatory safe-harbor events that are deemed to create an immediate and heavy financial need by: (1) expressly recognizing certain expenses associated with primary beneficiaries; (2) clarifying the impact of recent legislative changes to the casualty loss deduction described in Internal Revenue Code ("Code") section 165; and (3) adding a new safe-harbor event for expenses associated with federally-declared disasters. The SPARK Institute generally supports all of these changes, but we encourage Treasury and IRS to provide clarification on the following issues.

Substantiation Procedures for Hardship Distributions. The SPARK Institute was proud to participate in the IRS's Industry Issue Resolution ("IIR") Program that produced the February 23, 2017, and March 7, 2017, Employee Plans ("EP") Examination Memoranda ("Substantiation Memo") setting forth substantiation guidelines that, if met, would allow a plan to be treated as satisfying the substantiation requirements for making hardship distributions on account of an immediate and heavy financial need. The Substantiation Memo, which has been incorporated into Internal Revenue Manual Sections 4.72.2 and 4.72.13, includes a very helpful Attachment that lays out the specific information and notifications for each of the six existing safe-harbor events that the IRS suggests be collected or provided in connection with each such event. The Substantiation Memo has been embraced by plan administrators and SPARK members have already begun to implement the guidance in the Substantiation Memo. It is an example of a successful collaboration between IRS and the industry. In addition to the clarifications requested below, the SPARK Institute is requesting IRS to generally confirm and restate that a plan will be treated as satisfying the substantiation requirement for making distributions deemed to be on account of an immediate and heavy financial need if the plan collects the information and provides the notifications described in the Substantiation Memo, as updated to reflect recent hardship distribution changes.

By its terms, the Substantiation Memo only refers to the existing safe-harbor events. The IRS should expressly clarify that the substantiation guidelines described in the Substantiation Memo will cover the new safe-harbor event for expenses incurred as a result of federally-declared disasters and ensure that the Internal Revenue Manual is updated accordingly. ***This update should set forth what information and notifications the IRS would expect a plan administrator to collect and provide to substantiate the new seventh safe-harbor hardship event for expenses related to federally-declared disasters***. We would assume that expenses and losses to property as a result of a federally-declared disaster would require information that is similar to what is currently collected for the sixth hardship event (expenses for repair of damage to the employee's principal residence). This would include, for example, the name of the disaster, the type, amount, and date of the expense incurred, and the address for the employee's principal residence or principal place of employment. But if the employee has loss of income as a result of the federally-declared disaster, what information should be collected? Is a certification from the employee sufficient? Or is it sufficient that the employer certifies that the employee was absent from work and/or lost opportunities for compensation, such as a reduction of hours or loss of overtime? We also request that the final regulations expressly permit plan administrators and their service providers to have followed substantiation procedures developed in good faith for the new seventh safe-harbor hardship event for federally-declared disasters until such time as the IRS issues guidelines for substantiation of this new safe-harbor hardship event.

Moreover, the IRS should update the Internal Revenue Manual to reflect the new standard for determining whether a distribution is not in excess of the amount necessary to satisfy the need, that is, the plan need not collect any documentation or substantiation other than an employee's representation that he or she has insufficient cash or other liquid assets to satisfy the need. We also request that the final regulations expressly permit plan administrators and their service providers to have followed substantiation procedures developed in good faith for the employee's representation until the IRS issues guidelines for substantiation that the employee has insufficient cash or other liquid assets to satisfy the need.

Finally, the IRS should also make any other updates to the Substantiation Memo that are necessary to reflect other relevant changes to the hardship distribution rules. For example, the Attachment to the Substantiation Memo says that "Hardship distributions cannot be made from earnings on elective contributions or from QNEC or QMAC accounts, if applicable." As this is no longer accurate, notifications like this must be removed or updated to reflect all of the relevant changes and plans must be given adequate time to update their communications and procedures.

Pre-Approved Plan Requirements. The IRS's pre-approved plan procedures place certain restrictions on plans that do not limit hardship distributions to the safe-harbor standards described in the 401(k) regulations. For example, Rev. Proc. 2011-49, Section 4.09(7) and Rev. Proc. 2017-41, Section 5.16(7) state that any hardship distribution from a *standardized* plan must satisfy the safe-harbor standards under the 401(k) regulations. Additionally, Rev. Proc. 2011-49, Section 6.03(14) states that opinion letters will not be issued to master & prototype section 401(k) plans that provide for hardship distributions under circumstances other than those described in the safe-harbor standards under the 401(k) regulations.

We understand those restrictions to mean that any plan that is required to limit hardship distributions to the circumstances described in the 401(k) regulations cannot make distributions that would fail to satisfy the regulatory safe harbor. We do not, however, understand those pre-approved plan procedures to require any plan, whether standardized or not, to incorporate all of the permitted safe-harbor events that are deemed to create an immediate and heavy financial need. Accordingly, Treasury and IRS should confirm that pre-approved plans do not need to be amended to offer all of the safe-harbor hardship events, including the new safe-harbor event for expenses related to federally-declared disasters.

In a similar regard, Treasury and IRS should also confirm that all pre-approved plans are permitted, but not required, to make safe-harbor hardship distributions available in the case of certain expenses attributable to primary plan beneficiaries. Q&A-5 of Notice 2007-7 states that plans may permit distributions for certain hardship events attributable to primary plan beneficiaries, and the IRS has issued favorable opinion and advisory letters for pre-approved plan documents that make it optional for a plan to allow hardship distributions on account of certain expenses attributable to primary plan beneficiaries. Accordingly, in light of the changes made by the proposed regulations, we recommend Treasury and IRS reaffirm that hardship distributions on account of certain expenses attributable to primary plan beneficiaries continue to be optional, rather than mandatory, terms of pre-approved plans.

Special Considerations for Pre-Approved 403(b) Plans. Similar to the clarification needed to address issues created by IRS's pre-approved plan procedures for qualified plans, we urge IRS to address how the hardship distribution changes will affect the pre-approved plan procedures for 403(b) plans. For example, Rev. Proc. 2013-22, Section 8.03(2) says that a pre-approved 403(b) plan "must provide that the participant's elective deferrals will be suspended for 6 months following the hardship distribution." The IRS should clarify that this restriction will no longer apply when the requirement to suspend contributions is eliminated.

IRS should also confirm that different investment arrangements under a 403(b) plan are not required to permit all of the safe-harbor hardship events, including the new seventh event for federally-declared disasters. The pre-approved plan procedures for 403(b) plans imply that different investment arrangements under a 403(b) plan are not required to offer hardship distributions for all of the safe-harbor events, but express clarification on this point would be helpful. *See* Rev. Proc. 2013-22, Section 8.02 (stating that the required provisions for every 403(b) pre-approved plan do not "preclude the adoption of a § 403(b) pre-approved plan . . . if different investment arrangements under a plan have different features or prevent the inclusion of additional provisions in the terms of the investment arrangements under the plan or other documents incorporated by reference."). Moreover, Treasury and IRS should use this regulatory project to also confirm that the terms of a 403(b) plan regarding hardship distributions may be more restrictive than the terms of the investment arrangement(s) used under the 403(b) plans, and in such event, the terms of the 403(b) plan will control.

Similarities to IRS Disaster Relief Announcements. The preamble states that the new safe-harbor event for expenses related to federally-declared disasters is "similar to relief given by the IRS after certain major federally-declared disasters" through IRS Announcements – e.g., Announcement 2017-15. This reference has caused confusion because of the differences between the newly proposed safe-harbor hardship event and the relief commonly granted by IRS Announcements following federally-declared disasters. Accordingly, the SPARK Institute recommends Treasury and IRS clarify the extent to which the proposed safe-harbor event for expenses related to federally-declared disasters is similar to the relief granted in those IRS Announcements and to update its audit guidelines accordingly. For example, final regulations should clarify: (1) whether there is a time limit for requesting a distribution under the proposed safe-harbor event;[1] (2) whether a safe-harbor hardship distribution is available for federally-declared disaster-related expenses incurred by an employee's spouse, dependents, and lineal ascendants and descendants who had a principal residence or principal place of employment located in the disaster area; (3) whether the IRS will permit plan administrators to temporarily disregard procedural requirements imposed by the terms of a plan in the event of a federally-declared disaster-related hardship, as long as the plan administrator makes reasonable attempts to assemble any foregone documentation; and (4) whether a safe-harbor hardship distribution is available for any disaster-related hardship of the employee (food, shelter, transportation), not just the types enumerated in the regulations. To the extent that the new disaster-related safe-harbor hardship event is more restrictive than the types of distributions described by IRS's disaster Announcements, any such limitations must only apply prospectively.

Because of the differences between the newly proposed safe-harbor event and the hardship and loan relief commonly granted after significant federally-declared disasters, our members are also interested to know whether Treasury and IRS intend to issue disaster relief through Announcements in the future. The extended plan amendment deadlines, relief for plan loans, and other relief granted by IRS Announcements for loans and hardship distributions make it easier for participants to access funds during times of substantial need and should be preserved. We encourage Treasury and IRS to continue making additional loan and hardship distribution relief available through IRS Announcements, as appropriate, and to consider making this relief automatic for all federally-declared disasters.[2]

II. AMOUNT NECESSARY TO SATISFY IMMEDIATE AND HEAVY FINANCIAL NEED

In light of the Bipartisan Budget Act of 2018 ("BBA") amendments affecting the regulatory standard for determining whether a distribution is in excess of the amount necessary to satisfy an immediate and heavy financial need, Treasury and IRS have also proposed a single standard for making that determination. As we read the proposal, Treasury and IRS have substituted the option between a "facts and circumstances" standard *or* a "safe-harbor" standard with a single standard to verify that the distribution is not in excess of the amount necessary to

[1] The current regulations do not include a time limit to request a hardship distribution. After a long time has passed, of course, a plan administrator might question whether the relevant expense still creates an immediate and heavy financial need. In practice, plan administrators and their service providers will use a "soft" deadline (such as 12 or 18 months) and if the expense is older than the deadline, the employer may be consulted or additional information may be requested. We would expect that such a reasonable practice would apply to the new seventh safe-harbor event. Some of our members have expressed a desire to have IRS guidance specify a deadline for requesting a safe-harbor hardship distribution that is similar to the deadline imposed through IRS Announcements following federally-declared disasters. Other members pointed out that clean-up after a major disaster might continue for many years. Note that there are two separate "deadlines"—first, a period after the disaster occurs by which the plan administrator should expect that any expenses associated with the disaster would have been incurred; and second, a period after the date the expense is incurred by which the employee is expected to seek reimbursement.

[2] One member pointed out that there is often confusion about the deadline to amend a plan to reflect that the plan has taken advantage of the relief in the disaster Announcements. Although not directly related to the proposed regulations, we urge the IRS to consider standardizing the amendment deadlines for these ad hoc Announcements, such as the end of the plan year that begins after the year the Announcement is released.

satisfy the need. We support the new standard and believe that Treasury and IRS have proposed a creative and workable standard in light of the changes made by the BBA. We have a few technical and clarifying comments, below.

Employee Representations Generally. Under the proposal, hardship distributions will be conditioned on an employee representing "*that he or she has insufficient cash or other liquid assets to satisfy the need.*" We are concerned that this standard may create confusion for employees requesting a hardship distribution, and for plan administrators reviewing the request, because it could be interpreted to exclude any employee with cash or liquid assets that exceed the amount of the expense that would otherwise qualify for a hardship distribution. In proposing this new standard, we believe that Treasury and IRS did not intend to prevent employees from taking a hardship distribution simply because they could hypothetically liquidate all bank accounts and other assets to cover expenses associated with a hardship event, without regard to any need to cover immediate expenses. Instead, we understand that the employee is representing that the employee's cash or liquid assets are not *reasonably available* to satisfy the need, for example, because an employee needs other liquid assets to cover other immediate necessities, like housing, transportation, or food.

"Actual Knowledge to the Contrary." Under the proposal, the plan administrator can rely on an employee's representation that the employee does not have sufficient cash or other liquid assets to satisfy the need, with one exception: a plan administrator cannot rely on an employee's representations about his or her cash or liquid assets *if the plan administrator has actual knowledge to the contrary*. This standard is in the current hardship distribution rules, but only for those plans that are not relying on the "safe-harbor" standard, which is a minority of plans. In other words, the vast majority of plans currently do not need to determine whether the plan administrator has actual knowledge that an employee has sufficient cash or other liquid assets to satisfy the need for which a hardship distribution is being requested. Under the proposal, every plan will need to apply this standard.

We are concerned that the "actual knowledge" standard is vague and difficult to administer, and raises significant privacy concerns. Imagine how such a standard might actually be relevant in practice. Suppose a participant requests a hardship distribution for medical expenses, and provides the necessary substantiation. But further suppose the head of human resources knows that the employee just received a year-end bonus that would be enough to pay the medical expenses. The head of human resources has no information about other expenses the employee might have. Is that "actual knowledge to the contrary"? Or suppose the employee drove into work the previous week with a new luxury car. Again, without a lot more private information about the employee's financial situation, the head of human resources cannot conclude that the employee does, in fact, have sufficient cash or other liquid assets. We would never expect the hardship distribution to be denied in these examples, which raises the question of when the "actual knowledge" will be relevant at all. In fact, the only *real world* example we could come up with in which the plan administrator would know the standard is met is when the plan administrator *is the actual employee* seeking a hardship distribution for herself and knows that she has sufficient liquid assets.

It is also important to keep in mind that many plans contract with a service provider to process hardship distributions. Most hardship distribution requests are received in good order and can be processed by service providers consistent with the plan's guidelines and procedures without the need for review by the plan administrator. Thus, it is difficult to discern how the "actual knowledge" standard would come into play. Finally, we do not see how such a standard could be verified by an IRS EP Examinations employee during an audit.

We appreciate the reason that the "actual knowledge" rule is in the current regulations and why Treasury and IRS have proposed to retain it: if a plan administrator knows that an employee's representation is false, the plan administrator should not accept it. Nonetheless, because we think this standard is difficult to administer, we suggest Treasury and IRS consider removing it. If not, Treasury and IRS should give clear guidance on what it means, e.g., by clarifying that a plan administrator would not be required to consider any information beyond the plan administrator's ordinary plan records and would not be required to make judgments with incomplete information regarding the employee's financial situation.

Employee Representations under 403(b) Plans. Although there is language in the preamble indicating that the new hardship distribution rules should generally apply to section 403(b) plans pursuant to Treas. Reg. section 1.403(b)-6(d)(2), the SPARK Institute is also asking Treasury and IRS to expressly clarify that 403(b) plans can rely on an employee's representation that the employee does not have sufficient cash or other liquid assets to satisfy the need. In previous rulemakings, Treasury and IRS have rejected the use of employee self-certification to determine an employee's eligibility to receive certain distributions from a 403(b) plan.[3] In light of these historical concerns regarding the use of self-certification for other 403(b) plan administration purposes, it would be very helpful for Treasury and IRS to expressly clarify that the proposed hardship regulations for determining whether the amount requested upon hardship is necessary to satisfy an immediate and heavy financial need is applicable to 403(b) plans, including the ability of a plan administrator (or vendor) to rely on an employee's representation that the employee does not have sufficient cash or other liquid assets to satisfy the need.

Employee Representations by Phone. Under the proposed regulations, in the case of hardship distributions made on or after January 1, 2020, "the employee must represent (in writing, by an electronic medium, or in such other form as may be prescribed by the Commissioner) that he or she has insufficient cash or other liquid assets to satisfy the need." Subject to the concerns discussed in the prior sections, the SPARK Institute supports this type of self-certification for purposes of determining whether an employee has alternative means reasonably available to satisfy an immediate and heavy financial need, and especially appreciate the reference to electronic certification. We have one clarifying suggestion. Many hardship distributions are processed, in part, though call centers. The SPARK Institute requests Treasury and IRS to clarify that the employee representation may be obtained verbally as long as the recording is stored for a period equal to the period the plan would retain a written certification.

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[3] *See e.g.*, The Preamble to the 2007 Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts, 72 Fed. Reg. 41128, 41132 (July 26, 2007) (expressing concern with 403(b) plan procedures that rely on employee certification because such certifications are not disinterested and lack employer oversight).

III. SOURCES FOR HARDSHIP DISTRIBUTIONS (EARNINGS, QNECS, & QMACS)

Section 41114 of the BBA permits hardship distributions to be withdrawn from qualified nonelective contributions ("QNECs"), qualified matching contributions ("QMACs"), and the earnings on any elective deferrals, QNECs, and QMACs. The SPARK Institute appreciates the language in the preamble clarifying that plans may limit the type of contribution sources available for hardship and to choose whether the plan will permit distributions of earnings. This interpretation is consistent with our understanding of the BBA's changes and offers important flexibility to plan sponsors.

Safe-Harbor Contributions. In explaining the BBA changes expanding the sources of plan assets available upon hardship, the preamble to the proposed regulations states that "[s]afe harbor contributions made to a plan described in section 401(k)(13) may also be distributed on account of an employee's hardship (because these contributions are subject to the same distribution limitations applicable to QNECs and QMACs)." This language has created some confusion because of its narrow reference to "safe-harbor contributions made to a plan described in section 401(k)(13)" – i.e., qualified automatic contribution arrangements ("QACAs"). Because the preamble language exclusively references safe-harbor contributions made under a QACA, without referencing safe-harbor contributions generally, some practitioners are concerned that the preamble language could be construed to exclude safe-harbor contributions that are not made under a QACA. Although such a result would not be consistent with the current definition of QNECs and QMACs in Treasury Regulation section 1.401(k)-6, Treasury and IRS should expressly confirm that any type of safe-harbor contribution and any earnings thereon can be distributed upon hardship. This would include safe-harbor contributions made to a plan described in Code section 401(k)(12) or 401(k)(13).

Other Safe-Harbor Plan Issues. There are two other issues related to plans that comply with the safe-harbor contribution rules of Code section 401(k)(12) and 401(k)(13). First, because of the late release of the proposed regulations, some plans may not have been able to reflect changes to their hardship distribution rules for the 2019 plan year in their 2019 safe-harbor notices that were distributed to employees (for calendar year plans) only a few weeks after the proposed regulations were published. In fact, since safe-harbor notices can be distributed up to 90 days before the beginning of the plan year, some plans may have distributed the safe-harbor notice *before* the proposed regulations were published. We urge Treasury and IRS to clarify that a plan does not fail to comply with the safe-harbor notice rules solely because the 2019 safe-harbor notice did not reflect the proposed regulations.

Second, we think some plans may implement the changes to the hardship distribution rules reflected by the proposed regulations in the middle of a plan year. In some cases the proposed regulations provide the flexibility to do so,[4] and in other cases the requirement is

[4] For example, while the changes made by the BBA generally are not applicable until plan years beginning on or after January 1, 2019, the proposed regulations generally provide flexibility to implement those changes at any time during the 2019 plan year.

applicable in the middle of the plan year. (For example, non-calendar year plans will be forced to implement the removal of the six-month suspension mid-year because the proposed regulations would make that mandatory for hardship distributions made on or after January 1, 2020.) We urge Treasury and IRS to provide assurance in the preamble to the final regulations that safe-harbor plans may make these changes – which are all favorable to participants – in the middle of the plan year, without sending a second safe-harbor notice.

IV. PLAN AMENDMENTS

Individually Designed Qualified Plans. The preamble explains that "[a] plan amendment that is related to the final regulations, but does not correct a disqualifying provision . . . will be treated as integrally related to a disqualifying provision." The apparent intent of this treatment is to make the amendment deadline the same for all plan amendments related to the hardship changes in the proposal. And in the context of individually designed qualified plans, the SPARK Institute supports this relief as it would provide a helpful extension of the amendment deadline otherwise applicable to plans.

Pre-Approved Plans. In the context of pre-approved plans, however, additional relief and clarification is necessary in order to ensure that pre-approved plans have adequate time to amend their plan documents to reflect the changes addressed by the proposed regulations. Without such relief, pre-approved plans could be subject to unreasonable deadlines for adopting amendments that are necessary to implement the changes addressed by the proposed regulations. While our comments below primarily focus on the timing required for such amendments, we also ask Treasury and IRS to clarify how detailed any pre-approved plan amendments must be to incorporate all of the hardship changes.

Consider a pre-approved plan that, consistent with the existing regulations, permits hardship distributions to repair an employee's principal residence, but only if the expense qualifies for the casualty loss deduction under Code section 165. If the plan operationally continued to grant hardship distributions under the existing safe harbor after December 31, 2017 without regard to Code section 165(h)(5), an amendment would presumably be required in order to harmonize the plan's operation with its terms – i.e., the plan would need to be retroactively amended to state that, after December 31, 2017, hardship distributions would be available without regard to Code section 165(h)(5).[5] Under Rev. Proc. 2016-37, the deadline for adopting such an amendment could require an amendment as early as 2018 or shortly thereafter, depending on the employer's plan and tax years. The same deadline would also seemingly apply for any plan that seeks to add the new disaster-related safe-harbor event unrelated to a principal residence for 2018. Further, language in the preamble could even be interpreted to suggest that the same deadline applies to any amendment that must be adopted by plans that make available

[5] Alternatively, there are also plan sponsors that applied the Code section 165(h) casualty loss limitation to their hardship distribution rules during 2018, but due to the flexibility offered by the proposed regulations, will be reversing plan operations to permit principal residence casualty loss hardship distributions without regard to Code section 165(h). We recommend Treasury and IRS permit such plans to forego any need to expressly amend their documents to expressly state the brief period of operation applying the casualty loss changes into the plan's hardship distribution rules.

the Hurricane Florence and Michael hardship and loan relief modeled on Announcement 2017-15.

We do not believe Treasury and IRS intended pre-approved plans to need an amendment in 2018 or early 2019, as the proposed regulations were not published until November 14, 2018. In fact, the proposed regulations were released just as pre-approved plan document providers were finishing up their submissions for opinion letters (due December 31, 2018). We expect instead that after the final regulations are published, or in connection with the final regulations, Treasury and IRS will provide guidance as to the deadline for pre-approved plan document providers to release mid-cycle amendments that allow plans to document how the plan administered the options available under the regulations. Nonetheless, there is some confusion in the industry on this point, and we strongly encourage Treasury and IRS to provide an extended amount of time for pre-approved plans to adopt amendments that are related to the hardship distribution changes addressed by any final regulations. That extended adoption deadline should be no earlier than the amendment deadline that would apply to an individually designed plan.

403(b) Plans. The SPARK Institute encourages Treasury and IRS to publish guidance clarifying when individually designed and pre-approved 403(b) plans must be amended in order to comply with the hardship distribution changes addressed by the proposed regulations. This guidance is necessary because the IRS procedures outlining the plan amendment deadlines for qualified plans – i.e., Rev. Proc. 2016-37 – do not apply to 403(b) plans. While we appreciate that Treasury and IRS have a guidance project on amendment deadlines for 403(b) plans, we urge guidance on these changes immediately, as 403(b) plans will be implementing these changes long before that project is completed.

V. POSSIBILITY OF HEARING

We believe that our comments are relatively straightforward, and thus we are not formally requesting a hearing at this time. We would urge the agencies to consider a hearing, however, if comments received suggest additional input and interaction would be helpful. If the agencies believe a hearing would be helpful, or if other commenters request a hearing, we hereby request to testify at such a hearing.

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The SPARK Institute again appreciates the opportunity to provide comments on the proposed hardship regulations. If you 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 202-347-2230).

Sincerely,

Tim Rouse
Executive Director

cc: David Horton, Acting Commissioner, Tax Exempt & Government Entities Division
Catherine Jones, Acting Director, Employee Plans