



February 9, 2018

Robert Neis
Benefits Tax Counsel
Office of the Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, D.C. 20220

Re: H.R. 1's Impact on Retirement Plans and Recordkeepers

Dear Mr. Neis:

The SPARK Institute, Inc. is writing to request guidance on the retirement-related changes included in Pub. L. No. 115-97, commonly referred to as "H.R. 1" or the "Tax Cuts and Jobs Act."

Although there were relatively few retirement-related changes included in H.R. 1, many of those changes warrant additional guidance from the Department of the Treasury and the Internal Revenue Service. For your consideration, we have enclosed a list of questions and suggestions for additional guidance on each of these matters.

Many of our questions regarding H.R. 1's relief for individuals affected by natural disasters in 2016 overlap with issues raised in a previous request for guidance we submitted shortly after passage of the Disaster Tax Relief and Airport and Airway Extension Act of 2017. A copy of that request for guidance is also enclosed.

If you have any questions or would like more information, 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

Enclosures:

- Questions & Suggestions Regarding H.R. 1's Changes Affecting Retirement Plans
- Questions & Suggestions Regarding Hurricane Harvey, Irma, and Maria Tax Relief



H.R. 1 – THE TAX CUTS AND JOBS ACT
QUESTIONS AND SUGGESTIONS REGARDING CHANGES AFFECTING RETIREMENT PLANS

The SPARK Institute, Inc. is pleased to submit this list of questions and suggestions to the Department of the Treasury and the Internal Revenue Service (IRS) regarding the retirement-related changes included in Pub. L. No. 115-97, commonly referred to as “H.R. 1” or the “Tax Cuts and Jobs Act.”

EXTENDED ROLLOVER PERIOD FOR PLAN LOAN OFFSET AMOUNTS (§ 13613)

- H.R. 1 extends the period for rolling over a loan offset amount until the due date, including extensions, for filing the tax return for the year in which the loan is treated as distributed from the plan.
 - 402(f) Notice: The model 402(f) notice refers to the general 60-day rollover period and the IRS will need to update the model notice. **SPARK recommends** the IRS issue model language, or otherwise provide guidance for plan administrators, to use as soon as possible. Issuing an updated 402(f) notice often is a lengthy process.
 - Loan Offset Rollover Deadline: There is ambiguity in the deadline that H.R. 1 sets for rolling over qualified plan loan offset amounts. The deadline for rolling over a qualified plan loan offset amount is “the due date (including extensions) for filing the return of tax for the taxable year in which such amount is treated as distributed from a qualified employer plan.” Is this the tax filing due date, including extensions, possible for any taxpayer – i.e., October 15? Or, is this a specific taxpayer’s filing due date, including any extension actually requested by the taxpayer – i.e., April 15, unless the taxpayer actually requests an extension? **SPARK recommends** the IRS clarify that the extended deadline for rolling over qualified plan loan offset amounts is the tax filing due date, including extensions, for any taxpayer – i.e., October 15 – regardless of whether an individual taxpayer requests an extension.
 - Plan Documentation: Many plans accept rollover contributions from other plans. Most plan documents, and the IRS’s sample plan provisions in the Listing of Required Modifications, however, simply refer to acceptance of indirect and direct rollover contributions and do not specifically address rollovers of loan offsets. Rollovers of loan offset amounts into plans are relatively uncommon, but can occur. **SPARK recommends** the IRS confirm that:

- § No plan amendment is required to plans that already permit rollover contributions, unless a plan document specifically refers to a 60-day period to receive indirect rollovers.
- § A plan administrator, including a plan administrator for a 403(b) or 457(b) plan, may accept the self-certification of an employee that an incoming rollover is a “qualified plan loan offset amount.” For example, we assume that an employee can, consistent with or similar to previous IRS guidance, self-certify that a loan offset amount is the result of severance from employment or plan termination. *See e.g.*, IRS Rev. Proc. 2016-47 and Rev. Rul. 2014-9. Also, if the IRS does not clarify, as recommended above, that the deadline to roll over a qualified plan loan offset amount for all taxpayers is October 15, then we assume that taxpayers can self-certify that they have requested a tax filing extension if they attempt to roll over a qualified plan loan offset amount after April 15 in the year following the year in which such amount is treated as distributed from the plan.

RELIEF FOR 2016 DISASTER AREAS (§ 11028)

- H.R. 1 provides tax relief for certain retirement plan and IRA distributions taken on or after January 1, 2016, and before January 1, 2018, for certain individuals who sustained an economic loss by reason of events giving rise to a major disaster declared in 2016.
 - 2016 Disaster Areas: The IRS has released draft instructions for Form 8915-A in order to help administer the individual tax relief available for “qualified 2016 disaster distributions.” The draft instructions include a table identifying disaster areas declared by the President in 2016. Notwithstanding that table, SPARK **recommends** the IRS provide additional clarification on which disaster areas are eligible for relief. For example, is relief available for a major disaster that occurred in 2016, even if it was not technically declared a major disaster until 2017, such as the Oregon winter storm in December 2016?
 - Distribution Reclassification: It appears that for H.R. 1 to have any practical effect, individuals who became eligible to receive “qualified 2016 disaster distributions” as a result of H.R. 1 § 11028 can reclassify distributions, including hardship distributions, taken during 2016 or 2017 to pay for disaster expenses as “qualified 2016 disaster distributions”. If that is correct, SPARK **recommends** guidance confirming that reclassification is solely the responsibility of plan participants and IRA owners; and that plan administrators and IRA custodians are not responsible for taking other actions to “reclassify” the distributions. For example, plan administrators should not be required to correct previously issued Forms 1099-R, modify previous withholdings, adopt plan amendments, or allow otherwise impermissible elective deferrals within six months of a distribution that was initially classified as a safe-harbor hardship distribution. In this regard, we are requesting confirmation that reclassification of any distribution as a qualified 2016 disaster distribution does not have any effect beyond a participant’s personal

income tax liability and the participant's ability to roll over a qualified 2016 disaster distribution.

In addition, SPARK **recommends** guidance confirming that plan participants, not plan administrators, are responsible for determining the maximum amount available for qualified disaster distributions during the relief period.

- Form 1099-R Disaster Distribution Coding: On the IRS webpage devoted to Form 1099-R, a note has been posted instructing payors to “[u]se Distribution Code 2 on Form 1099-R to report retirement plan (including IRAs) participant distributions made in 2017 due to Hurricanes Harvey, Irma, or Maria.” Distribution Code 2 is used to report early distributions when an exception to the early distribution penalty is known to apply.

This recent posting is inconsistent with prior IRS guidance instructing payors that they are permitted to use Distribution Code 1 – early distribution, no known exception – for qualified disaster distributions. *See* IRS Notice 2005-92, Section 3.A. Moreover, plans and service providers have not been provided with adequate notice to collect the information necessary to use Code 2 or coordinate reporting systems based on this guidance in time for 2017 reporting. SPARK **recommends** the IRS confirm that Distribution Code 1 or 2 may be used on Form 1099-R, Line 7 to report a “qualified hurricane distribution” received as a result of Hurricane Harvey, Maria, or Irma in 2017.

- Other Issues: H.R. 1's retirement savings disaster tax relief is very similar to disaster relief extended by Congress to victims of Hurricanes Harvey, Irma, and Maria at the end of 2017 (2017 Disaster Relief). We submitted a letter to the Department of the Treasury and the IRS on October 27, 2017 requesting additional guidance on the 2017 Disaster Relief. Because many issues overlap between H.R. 1's disaster relief and the 2017 Disaster Relief, we have enclosed our list of questions and suggestions for the 2017 Disaster Relief with this letter.

MODIFICATION OF DEDUCTION FOR PERSONAL CASUALTY LOSSES (§ 11044)

- The hardship distribution safe-harbor regulations include a list of events that are deemed to be on account of an “immediate heavy and financial need,” including “[e]xpenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).” *See* Treas. Reg. §1.401(k)-1(d)(3)(iii)(B)(6). H.R. 1, however, amended section 165 to provide that, for tax years 2018 through 2025, a casualty deduction is available only with respect to losses attributable to a federally declared disaster.
 - Safe-Harbor Hardship Distributions: For taxable years after 2017 and before 2026, will the hardship distribution safe-harbor regulations continue to cover expenses for the repair of damage to an employee's principal residence that would

qualify for the casualty deduction under section 165 without regard to whether the casualty is attributable to a federally declared disaster?

- § SPARK **recommends** the IRS either clarify, through sub-regulatory guidance, that a casualty loss for purposes of determining whether a retirement plan participant has experienced an “immediate heavy and financial need” is not affected by H.R. 1’s changes to the definition of a casualty loss or, if necessary, amend its regulations to continue to allow safe-harbor hardship distributions for casualty losses that would qualify, but for the federal disaster declaration provision of H.R. 1. We see no policy reason to restrict hardship distributions to losses incurred as a result of a federally declared disaster, nor is there any indication Congress intended for the change to section 165 to affect hardship distributions from retirement plans.

PASS-THROUGH DEDUCTION (§ 11011)

- H.R. 1 provides a new deduction for individual taxpayers with respect to qualified business income of pass-through businesses. There has been considerable discussion about whether or not this deduction reduces the incentive for the owner of a pass-through business to contribute to a retirement plan, or even maintain a plan at all. The complexities of the calculation of the deduction are beyond the scope of this request. The SPARK Institute’s primary concern is ensuring that guidance does not result in a reduction in plan coverage or savings.
 - SPARK **recommends** that experts at Treasury and IRS in employee plans are involved in developing the guidance regarding the pass-through deduction in H.R. 1. We further recommend that this guidance address how retirement plan contributions are treated for purposes of the calculation of the deduction. The guidance should address employer contributions, pre-tax elective deferrals, and Roth contributions. The guidance should also address differences, if any, between the implications for owners of S corporations, partnerships, and sole proprietorships.

EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION (§ 13602)

- H.R. 1 imposes a 21% excise tax on any remuneration in excess of \$1 million when paid by a tax-exempt organization to its five highest compensated employees.
 - 457(b) Plans: For purposes of this excise tax, H.R. 1 defines “remuneration” to mean “wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).” SPARK **recommends** the IRS confirm that: (a) remuneration includes distributions from a 457(b) plan (other than a governmental 457(b) plan) when such distributions are treated as wages for purposes of section 3401(a); and (b) the

exemption for 457(b) plans of state and local governments under section 3401(a)(12)(E) applies for purposes of the new excise tax.

MISCELLANEOUS H.R. 1 CHANGES INDIRECTLY AFFECTING RETIREMENT SAVINGS

- Changes Affecting Compensation: H.R. 1 temporarily eliminates the deduction for employee moving expenses. That change may affect how plans calculate employee “compensation” – a concept that is critical for plan administration – because the regulations under section 415 reference “amounts paid or reimbursed by the employer for moving expenses incurred by the employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the employee under section 217.” Treas. Reg. § 1.415(c)-2(b)(4). SPARK **recommends** the IRS provide guidance on how H.R. 1’s changes will affect the calculation of “compensation” for different purposes. The IRS has also published lists of items that are and are not counted as compensation for the various allowed definitions of compensation under the section 415 regulations. It would be very helpful to provide confirmation of how H.R. 1’s changes affect those various definitions.
- Withholding: In connection with H.R. 1’s temporary elimination of personal exemptions, H.R. 1 amends the default withholding rules for periodic payments made from retirement plans and IRAs. For example, if a participant requests periodic payments but does not make a withholding election, the law in effect prior to H.R. 1 instructed payors to automatically withhold as if the payee was married with three withholding allowances. H.R. 1 eliminates this default withholding rule and provides that withholding “shall be determined under rules prescribed by the Secretary” when no election is made.

IRS Notice 2018-14 explains that, for 2018, rules parallel to the rules in effect prior to H.R. 1 will apply when no withholding election is made with regard to periodic payments. While this guidance is helpful for 2018, SPARK **recommends** the IRS permanently update its guidance on these withholding rules for 2018 and beyond, including an update to the model notices provided in the withholding regulations.



**DISASTER TAX RELIEF ACT PROVISIONS AFFECTING RETIREMENT PLANS
HURRICANES HARVEY, IRMA, AND MARIA
QUESTIONS AND SUGGESTIONS FOR GUIDANCE**

The SPARK Institute is pleased to submit this list of questions and suggestions to the Department of the Treasury and the Internal Revenue Service (IRS) regarding section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (DTRA), which included special retirement plan tax relief for individual taxpayers that have been affected by Hurricanes Harvey, Irma, and Maria. Those provisions are nearly identical to the retirement-related provisions contained in the Katrina Emergency Tax Relief Act (KETRA) and Gulf Opportunity Zone (GO Zone) Act of 2005.

Shortly after Congress passed KETRA, the IRS published interpretive guidance on KETRA's retirement-related provisions through Notice 2005-92. Additional guidance was also offered through Publication 4492 (Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma) and Form 8915 (Qualified Hurricane Retirement Plan Distributions and Repayments).

Except where otherwise noted, we recommend that the IRS's DTRA guidance follow the guidance in Notice 2005-92. In many cases, the questions below were **not** addressed by Notice 2005-92. Therefore, we recommend that any new guidance be prospective only and IRS should confirm that it will not apply any new guidance to previous qualified hurricane distributions (including distributions made for Harvey, Irma, and Maria prior to the issuance of any guidance).

Three-Year Repayment Period for Qualified Hurricane Distributions

- **Accepting Repayments:** Are eligible retirement plans that otherwise accept rollovers required to accept qualified hurricane distribution rollovers during the 3-year repayment window? What if a plan accepts certain types of rollover contributions (e.g., pre-tax) but not other types of contributions (e.g., Roth)?
 - *SPARK **recommends** the IRS make clear that plans are not required to accept qualified hurricane distribution repayments to the extent that a plan would not otherwise permit such amounts to be rolled over (e.g., plans that do not accept rollovers should not be required to accept qualified hurricane distribution repayments, plans that do not have Roth accounts should not be required to accept repayments of qualified hurricane distributions from other Roth accounts, and plans that have Roth accounts, but do not accept rollovers of Roth amounts, should not be required to accept qualified hurricane distribution repayments consisting of Roth amounts).*

- **Documentation:** What documentation is required for a repayment of a qualified hurricane distribution?
 - *SPARK **recommends** the IRS permit plans to rely on an individual’s self-certification as to whether a rollover is a permitted repayment of a qualified hurricane distribution.*

- **Repayment Destination:** Can individuals repay qualified hurricane distributions to any eligible retirement plan that accepts eligible rollover distributions? Or, are individuals only permitted to repay qualified hurricane distributions to the eligible retirement plan from which such distributions were initially taken?
 - *Regardless of how the IRS resolves this question, SPARK **recommends** that, if the repayment must be made to the same plan, that the receiving plan not be required to match up the repayment and the original distribution, but can instead rely on the certification of the participant.*

- **Treatment of Recontributed Amounts:** How should qualified hurricane distribution repayments be treated? Should they be treated as rollover contributions or, if deposited back to the plan from which the initial distribution was made, should they be treated as the qualified hurricane distribution’s original “source” – e.g., elective deferrals. (This treatment will affect eligibility for distributions in the future.)
 - *SPARK **recommends** the IRS clarify that all qualified hurricane distribution repayments should be treated as rollover contributions for all purposes.*

- **Beneficiaries and Inherited IRAs:** Are non-spouse beneficiaries eligible to repay qualified hurricane distributions to an IRA? IRS Notice 2005-92 said that Katrina distributions paid to a non-spouse beneficiary could not be recontributed to an eligible retirement plan. That 2005 guidance, however, was published prior to the addition of Code section 402(c)(11).
 - *SPARK **recommends** the IRS clarify that non-spouse beneficiaries are permitted to repay qualified hurricane distributions to the extent that such repayments are made to an individual retirement plan satisfying the requirements of Code section 402(c)(11).*

Eligibility for Qualified Hurricane Distributions

- **Self-Certification:** In determining whether an individual is eligible for a qualified hurricane distribution, can employers rely on an individual’s self-certification when determining the maximum amount of any qualified hurricane distribution (up to \$100,000), whether a recipient experienced an “economic loss,” and whether a recipient’s principal place of abode is located within an eligible disaster area.

- *SPARK **recommends** the IRS clarify that employers can rely on self-certification for these purposes.*
- **Maximum Qualified Hurricane Distribution:** The maximum amount that can be treated as a qualified hurricane distribution under section 502(a)(2)(A) of DTRA is reduced by “the aggregate amounts treated as qualified hurricane distributions received by such individual for *all prior taxable years.*” Does this include hurricane distributions described under section 101 of KETRA or section 201 of the GO Zone Act?
 - *SPARK **recommends** the IRS make clear that any hurricane distributions received in connection with any hurricanes preceding Hurricanes Harvey, Irma, or Maria will not be taken into account for purposes of determining the maximum amount of any individual’s qualified hurricane distribution.*
- **Economic Loss:** IRS Notice 2005-92 indicated that Katrina distributions were “permitted without regard to the qualified individual’s need and the amount of the distribution [was not] required to correspond to the amount of the economic loss suffered by the qualified individual.”
 - *SPARK **recommends** the IRS make clear that a similar standard applies to qualified hurricane distributions received by individuals affected by Hurricanes Harvey, Irma, and Maria.*
- **Reclassification of Hardship Distributions:** Can an individual that is eligible to receive a qualified hurricane distribution reclassify a hardship distribution or unforeseeable emergency distribution taken prior to the passage of DTRA as a qualified hurricane distribution? If so, can the individual repay such distribution within three years?
 - *Regardless of how the IRS resolves this question, SPARK **recommends** that the receiving plan: (a) need not alter its records, and (b) can accept the certification of the individual regarding repayment. Plan administrators should not be required to reissue Form 1099-R to any individual who wants to reclassify a hardship or other eligible rollover distribution as a qualified hurricane distribution.*

If the IRS permits reclassification of hardship distributions, it must also provide guidance for employers on how such amounts should be treated when determining the maximum amount of any available qualified hurricane distribution during the relief period.
- **Disaster Areas:** We believe that the hurricane “disaster areas” for purposes of section 502 of DTRA includes all areas of Florida, Georgia, Puerto Rico, and the Virgin Islands where affected taxpayers have been given extended deadlines to file tax returns, pay taxes, and perform other time-sensitive acts until January 31, 2018 under Rev. Proc. 2007-56, and not just those counties eligible for *individual* assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Also, we believe that all areas

of Texas declared a disaster area before September 21, 2017, are eligible for DTRA's retirement-related tax relief. Please confirm.

The IRS recently announced tax relief for additional counties affected by Hurricane Harvey in Texas and Louisiana, and counties in South Carolina affected by Hurricane Irma. Can the IRS clarify whether DTRA's retirement-related tax relief extends to individuals in those Texas, Louisiana, and South Carolina counties that were not declared a major disaster area before September 21, 2017?

- **Employer Contributions**: Are employers permitted to expand their plans' distribution options to allow for the distribution of all amounts attributable to any vested portions of a participant's account as a qualified hurricane distribution (e.g., nonelective contributions and matching contributions), other than in-service distributions of money purchase and other pension plan benefits as noted in Notice 2005-92?
 - *SPARK **recommends** that, consistent with KETRA's legislative history,¹ a profit-sharing plan may make distributions of any vested employer contributions.*

DTRA's Relief Affecting Loans from Qualified Plans

- **Increased Loan Limits**: Are qualified employer plans required to permit individuals affected by the storms to take loans in excess of the Code section 72(p)(2)(A) plan loan limits in accordance with section 502(c)(1) of DTRA?
 - *SPARK **recommends** the IRS confirm that DTRA's increased loan limits are permissive, rather than mandatory. We understand that it was relatively uncommon for employers to increase their loan limits as a result of KETRA and the GO Zone Act, because for most employees, the distribution opportunity (with the possibility of repayment within three years) was more useful and relevant for those severely affected by the storms.*
- **Loan Repayment Extension**: Are qualified employer plans required to extend a qualified individual's loan repayment schedule in accordance with section 502(c)(2) of DTRA? Also, does the IRS intend to issue a safe-harbor for satisfying those provisions similar to the loan repayment safe-harbor described in IRS Notice 2005-92, section 5.B?
 - *SPARK **recommends** that IRS make clear that DTRA's extended loan repayment rules are permissive, not mandatory. Also, SPARK recommends the IRS confirm*

¹ "A qualified disaster-relief distribution is a permissible distribution from a 401(k) plan, 403(b) annuity, or governmental 457 plan, regardless of whether a distribution would otherwise be permissible. A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified disaster-relief distribution." Joint Committee on Taxation, *Technical Explanation of H.R. 3768, the "The Hurricane Katrina Tax Relief Act of 2005," as amended by the Senate on September 15, 2005*, (JCX-67-05), September 20, 2005. With respect to nonelective and matching contributions to a profit-sharing plan, we would note that Revenue Ruling 71-224 states that a profit-sharing plan may make distributions upon the occurrence of a hardship without violating Treasury Regulation section 1.401-1.

that the loan suspension “safe-harbor” in IRS Notice 2005-92, section 5.B applies to extended loan repayment under DTRA.

- **Self-Certification:** Will the IRS permit employers to rely on self-certification when determining whether a retirement plan participant is a qualified individual for purposes of determining eligibility for the loan relief described in section 502(c) of DTRA?
 - *SPARK **recommends** the IRS make clear that employers are permitted to rely on self-certification for purposes of determining whether a retirement plan participant is a qualified individual when determining eligibility for the loan relief described in section 502(c) of DTRA.*

- **Loan Repayments Upon Termination of Employment:** Can the IRS clarify how DTRA’s extended loan repayment rules apply to retirement plan loan repayments that become due upon an employee’s termination of employment or some other distributable event?
 - *SPARK **recommends** the IRS make clear that DTRA’s extended loan repayment rules do not apply to loan acceleration provisions that make a loan repayment due upon termination of employment or some other distributable event (e.g., death, disability, or attainment of the plan’s normal retirement age).*

- **Loan Offsets vs. Deemed Distributions:** Can the IRS provide further guidance on the treatment of different loan defaults? For example, we would like additional guidance on when deemed distributions and loan offsets can be repaid over three years. Further, what happens if a participant has a loan default and a deemed distribution, but is otherwise eligible for a qualified hurricane distribution – can the loan be offset because of the existence of a distributable event? (Because of DTRA’s extended loan repayment relief, this will be rare unless the participant *wants* to default and have an offset to take advantage of the three-year income inclusion rule, or the plan does not allow extended repayment.)
 - *SPARK **recommends** the IRS make clear that a deemed distribution for a person that is otherwise eligible for a qualified hurricane distribution is entitled to all of the qualified hurricane distribution relief described in section 502(a) of DTRA.*

- **Adequate Security:** We recommend that Treasury and IRS work with the Department of Labor to confirm that Labor will not treat any person as having violated the provisions of Title I of the Employee Retirement Income Security Act (ERISA), including the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1, solely because the person made a plan loan to a qualified individual in accordance with section 502(c) of DTRA, Code section 72(p), and the provisions of any relevant IRS guidance.

Miscellaneous Administrative Hardship and Loan Relief Issues

- Plan Amendments: What plan amendments are required in order for employers to rely on the hardship, unforeseeable emergency, and loan relief described in IRS Announcements 2017-11 and 2017-13? Are employers that already permit loans, hardship distributions, and unforeseeable emergency distributions required to amend their plans in order to rely on the Announcements? Will the answer be the same regardless of whether the employer sponsors a 401(k), 403(b), or 457(b) plan? What if a 401(k) or 403(b) plan permits hardship distributions, but only for safe-harbor hardship reasons? Would that plan need to be amended in order to be eligible for the relief described in Announcements 2017-11 and 2017-13 if it makes non-safe-harbor hardship distributions between the storms and January 31, 2018?
- Hurricane Maria Hardship and Loan Relief: There has been confusion over whether the hardship, unforeseeable emergency, and loan relief described in IRS Announcements 2017-11 and 2017-13 has been extended to individuals affected by Hurricane Maria in Puerto Rico municipalities not designated under Hurricane Irma. Please confirm that the relief in IRS Announcements 2017-11 and 2017-13 applies to the entire island of Puerto Rico.

Withholding and Reporting

- Mandatory Withholding: Are employers required to treat all distributions to affected individuals as qualified hurricane distributions for purposes of the withholding rules? For example, can employers continue to impose mandatory 20% withholding for eligible rollover distributions?
 - *SPARK **recommends** that the IRS confirm the guidance in Notice 2005-92, namely that an employer is permitted to choose whether to treat distributions under its plan as qualified hurricane distributions and is permitted to develop any reasonable procedures for identifying which distributions are treated as qualified hurricane distributions under its plan. The IRS should also make clear that, if an employer does not treat a distribution as a qualified hurricane distribution during the relief period, including because the plan has decided not to offer a new distribution option, DTRA's exception to mandatory 20% withholding does not apply to distributions that otherwise qualify as eligible rollover distribution.*
- Withholding on Previous Distributions: Since a distribution made before the passage of DTRA can be characterized now as a qualified hurricane distribution, what should a plan do with respect to the 20% withholding that was applied to an eligible rollover distribution that is subsequently determined to be eligible to be treated as a qualified hurricane distribution?
 - *SPARK **recommends** the IRS clarify that payors are not required to make any changes with respect to withheld amounts on distributions that were not treated by the plan as qualified hurricane distributions. Our members do not have*

systems that are designed to return any amounts previously withheld from a payee.

- Form 5498 for IRAs: We are also requesting guidance on how IRA trustees and issuers should report qualified hurricane distribution repayments on the Form 5498. For example, Box 2 of the Form 5498 reports rollovers and Box 14a reports repayments of federally designated disaster withdrawals. If qualified hurricane distributions repaid to an IRA are to be treated as having been transferred in a direct trustee to trustee transfer within 60 days of the distribution, should repayments be reported in Box 2, Box 14a, or both?