The SPARK Institute, Inc.
SHAPING AMERICA'S RETIREMENT

October 2, 2020

Submitted electronically at www.regulations.gov

CC:PA:LPD:PR
Internal Revenue Service
Room 523
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Rollover Rules for Qualified Plan Loan Offset Amounts (REG–116475–19)

Dear Sir or Madam:

The SPARK Institute appreciates the opportunity to comment on the regulations proposed by the Department of the Treasury and the Internal Revenue Service (the "Agencies") related to the extended rollover period for qualified plan loan offsets ("QPLOs").

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 95 million employer-sponsored plan participants. SPARK Institute members are directly involved in administering plan loans under 401(k), 403(b), and governmental 457(b) plans.

Our comments below state:

- While the proposal's bright line 12-month rule is a helpful approach to determining whether a plan loan offset is a QPLO, we are concerned that recordkeepers may not currently have sufficient information to track this period for purposes of Form 1099-R reporting.
- Accordingly, we recommend the Agencies consider an alternative bright line rule under which a plan loan offset is a QPLO if the offset occurs by the end of the calendar year following the calendar year in which the employee has a severance from employment.
- In any event, because plan administrators may not be currently set up to administer the new QPLO rules, a delay in the effective date, or good faith relief for Form 1099-R reporting, is needed.

With respect to a hearing, the SPARK Institute is not requesting a hearing, but if a hearing is held, we request the right to testify.

Background

A plan loan offset is a distribution when, under the plan terms governing the loan, the employee's accrued benefit is reduced (offset) in order to repay the loan. This occurs, most commonly, when a participant terminates employment and the plan's loan rules require that, in the event of an employee's termination of employment or request for a distribution, the loan is to be repaid immediately. Some plans, however, allow a participant to continue to repay a plan loan after termination of employment. Because a plan loan offset is a distribution from the plan, the plan loan offset may be rolled over, which would typically occur by a participant using separate funds to contribute an equivalent amount to an IRA or another employer plan. Prior to the Tax Cuts and Jobs Act of 2017 ("TCJA"), the deadline for a rollover was 60 days, the same as any other distribution.

TCJA provided that in the case of a QPLO, the deadline for a rollover is extended to the individual's tax filing due date (including extensions) for the taxable year in which the offset occurs. TCJA defines a QPLO as a plan loan offset amount that is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee.

Proposed Regulations

The key thrust of the proposed regulations is to provide rules on what constitutes a QPLO. First, the proposed regulations provide that to constitute a QPLO, the plan loan offset amount must relate to a plan loan that met the requirements of Code section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee. In other words, the loan must not already be in default (i.e. previously deemed distributed and reported as such).

Second, the loan must be treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee. A loan is treated as distributed "solely" because of severance from employment if the plan loan offset relates to a failure to meet the repayment terms of the plan loan, ***and occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date***. We refer to this as the "12-Month Rule."

The preamble to the proposed regulations explains that this 12-Month Rule was designed "to 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." This is important because the plan administrator will be required to report, on Form 1099-R, a QPLO amount differently than other plan loan offsets.[1]

Although we do offer some comments about this proposed rule, we want to state at the outset how much we appreciate the Agencies taking an approach designed to establish a bright line rule, to provide plan administrators (and SPARK members that assist them) certainty in how plan loan offsets are to be reported.

Administering the 12-Month Rule

As you know, loan administration, and therefore tax reporting, is typically performed by an outside recordkeeper. In most cases (but see our comments below regarding 403(b) plans), the recordkeeper will know whether or not an employee has had a severance from employment. Often, this will occur by the employer sending a "status change" update to the recordkeeper with respect to the participant. The status update may not, however, provide the *exact* date of severance from employment, as the main purpose of the status change update is to confirm that the participant is eligible for a distribution, and that the plan's small balance cash-out rule should be implemented, if applicable.

With respect to 403(b) plans, where it is common for loans to be eligible to be repaid after severance from employment, the issuer of the annuity or custodian of the custodial account (called the "vendor") may not receive any status change regarding employment. Rather, the vendor may only reach out to the employer if a participant requests a distribution prior to age 59½. (In that case, the vendor only needs the employer to confirm that the participant has in fact severed employment, not the exact date of termination.) Otherwise, the vendor has no need to know if a severance from employment has occurred.

In short, currently many recordkeepers (and 403(b) vendors) do not collect the exact date of severance from employment or track a 12-month period from that date.

Alternative Rule

Because the recordkeeper may not know the exact date of severance from employment, we suggest you consider a slightly modified rule for determining whether a plan loan offset is a QPLO. Rather than looking to the first anniversary of the date of an employee's severance from employment, we suggest you consider a plan loan to be a QPLO if the offset occurs ***by the end of the calendar year following the calendar year in which the employee has a severance from employment***.

[1] Generally, the extended rollover period for QPLOs is largely of relevance to the individual participant. The plan administrator must know whether or not the distribution is a QPLO for purposes of Form 1099-R reporting, as Code M must be entered in Box 7. Otherwise, it appears to us that a QPLO is treated by the plan similar to all other plan loan offsets, such as for withholding. Other than for Form 1099-R reporting, the only reason we believe a plan needs to know whether a plan loan offset is a QPLO is if the participant seeks to roll the QPLO to another plan and the receiving plan seeks confirmation from the distributing plan that the distribution is, in fact, a QPLO.

Because the rollover deadline of a QPLO is the due date, including extensions, for filing the return for the year in which the offset occurs, this modified rule would not extend the deadline for a participant to make a rollover of the loan offset. However, this modified rule would result in more savers being eligible for a rollover pursuant to the TCJA extension. It would also address situations in which the plan's records may not contain the exact date of severance from employment. Similar to the 12-Month Rule in the proposed regulations, the modified rule would be a bright-line rule that would be straightforward to administer.

<u>Need for Additional Time and Reporting Relief</u>

The Agencies are proposing to make the final regulations effective for plan loan offset amounts, including QPLO amounts, treated as distributed on or after the date of publication of the final regulations. As stated above, many plan recordkeepers are not currently tracking the information to confirm, with certainty, whether a plan loan offset will qualify as a QPLO under the definition in the proposed regulations. Thus, SPARK members will need time to program systems to properly report, on Form 1099-R, whether a plan loan offset is a QPLO. ***We recommend a delay in the effective date of one year from publication of the final regulations to allow systems to be properly programmed and tested***.[2] Alternatively, we recommend that the final regulations provide that a plan administrator or other reporting person will not be viewed as improperly reporting Form 1099-R for a period of one year from publication of the final regulations, provided that a reasonable, good faith effort is made to determine if the plan loan offset is a QPLO.

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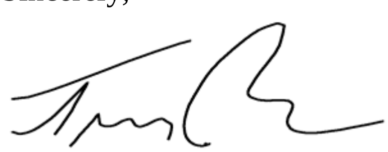
The SPARK Institute appreciates the opportunity to provide comments on the proposed rules related to qualified plan loan offsets. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP (mlhadley@davis-harman.com or 202-347-2230).

Sincerely,



Tim Rouse
Executive Director

[2] As was the case with the proposed regulations, we recommend that the Agencies retain in the final rule that participants may rely on them immediately for purposes of their own rollovers, and plan administrators can rely on them, if they are able to adjust their systems more quickly.