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Delivered via email

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Rachel Leiser Levy
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Internal Revenue Service
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Re: The SPARK Institute's SECURE 2.0 Guidance Request

Dear Ms. Weiser and Ms. Levy:

On behalf of the SPARK Institute, Inc., we are writing to request guidance from the Department of the Treasury (Treasury) and Internal Revenue Service (IRS) on the SECURE 2.0 Act of 2022 (SECURE 2.0). The SPARK Institute was very pleased to see SECURE 2.0 signed into law at the end of last year, as it delivers on many of the retirement reforms and enhancements that have long been priorities for the SPARK Institute.

While our guidance request covers a broad range of issues, in terms of immediate SECURE 2.0 guidance needs, SPARK's top priorities are: (A) relief from the last-minute increase of the required minimum distribution (RMD) age; and (B) relief and guidance for SECURE 2.0's Roth catch-up contribution requirement.

The SPARK Institute represents retirement plan recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms, and investment managers. Collectively, our member firms administer the retirement plans for over 100 million American workers.

SPARK's members are already working hard to understand and implement all of the changes included in SECURE 2.0, and we are very optimistic about the ways in which SECURE 2.0 will help all Americans better prepare for and maintain financial security in retirement. We also know that Treasury and IRS, like our members, have similarly been working very hard to understand the bill's dozens of provisions, prioritize regulatory needs, and issue guidance on the most pressing issues created by SECURE 2.0. In this regard, the SPARK Institute appreciates all of your efforts to ensure that SECURE 2.0 achieves its intended policy goals. Additionally, we appreciate the SECURE 2.0 guidance that has already been released, most notably the relief for IRA issuers, custodians, and trustees who may have incorrectly provided RMD notices to IRA owners who would have been required to receive an RMD for 2023, but for the changes made by SECURE 2.0.

As Treasury and IRS continue to develop their SECURE 2.0 regulatory priorities and consider the actual terms of any guidance, we encourage you to reach out to the SPARK Institute if we can be of any assistance. Additionally, to assist with your prioritization and drafting efforts, we have included below a list of guidance requests that our members have identified as needing clarification or confirmation from Treasury and IRS.

A. Updated Required Beginning Date (107)

SECURE 2.0: Section 107 of SECURE 2.0 increases the age triggering the required beginning date (RBD) from age 72 to age 73 for individuals who attain age 72 after 2022, and age 73 before 2033. SECURE 2.0 also increases the RBD age to age 75 for individuals who attain age 74 after 2032.

Guidance Request:

- ***Relief for Last-Minute Legislative Change.*** Because the RBD increase was not enacted until very late in 2022, the SPARK Institute requests that IRS provide relief for 2023 distributions that would have been an RMD but for the change made by Section 107 of SECURE 2.0. Specifically, we request that IRS provide relief that is similar to the relief that it granted in 2020 in response to Section 114 of SECURE 1.0. Thus:
    - Any distribution made from a plan on or after January 1, 2023 and before September 1, 2023 to a participant who turns 72 in 2023 would not be required to be treated as an eligible rollover distribution for purposes of Code sections 401(a)(31), 402(f), and 3405(c).
    - The IRS should automatically extend the deadline for indirectly rolling over these distributions to a date that is no earlier than August 31, 2023. Similar relief should also be granted for spousal beneficiaries who received a distribution on or after January 1, 2023 and before September 1, 2023 that would have been an RMD but for the RBD increase.
    - Rollover relief should also be made available for distributions from IRAs to IRA owners and beneficiaries that would have been an RMD but for the RBD increase. Any distributions repaid to an IRA pursuant to this relief should not be treated as a rollover for purposes of the one-rollover-per-year rule.[1]

- ***Clarification for Individuals Born in 1959.*** The RMD age for individuals who were born in 1959 is apparently both 73 and 75. If this issue is not resolved legislatively, the SPARK Institute requests clarification on the RMD age for individuals who were born in 1959.

B. Roth Catch-Up Contributions (603)

SECURE 2.0: Beginning in 2024, individuals with FICA wages in excess of $145,000 may only make 414(v) catch-up contributions to a 401(k) plan, 403(b) plan, or governmental 457(b)

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[1] *See* Notice 2020-51, Part III.A, C, & D.

plan as designated Roth contributions. 414(v) catch-up contributions include age-50 catch-up contributions, and the additional catch-up contributions that can newly be made by individuals ages 60-63. 414(v) catch-up contributions do not include the special 15-years of service catch-up limit for 403(b) plan participants or the special catch-up limit for participants in governmental 457(b) plans.

Guidance Request:

- ***Extension and/or Good Faith Relief.*** Our members have informed us that, even if guidance is issued immediately, there are significant obstacles to getting the mandatory Roth catch-up provision implemented by January 1, 2024. Not only will this change require a reconfiguration of payroll, plan, and recordkeeping systems, and appropriate advance notice to plan sponsors and affected participants, it will also impact nondiscrimination testing and the ways in which plans are administered to comply with such testing. Moreover, as discussed below, this change needs clarification from IRS and/or technical corrections from Congress. Given all of the challenges associated with this new provision, we recommend that the Service seriously consider providing additional time for plans to come into compliance. We believe that the Service can do so by announcing that it will not treat a 401(k), 403(b), or 457(b) plan as disqualified solely because the plan does not implement Section 603 of SECURE 2.0 in 2024. In the alternative, the SPARK Institute strongly encourages IRS to provide good-faith relief for the implementation of Section 603 of SECURE 2.0 for 2024, and to announce such relief as soon as possible.

  The need for delay and good-faith relief is especially acute in the context of governmental plans and multiemployer plans. Governmental 403(b) and 457(b) plans, in particular, are very unlikely to offer Roth features, and adopting such a feature, by itself, may require legislative changes and/or revisions to collective bargaining agreements.

  Multiemployer plans will also find it nearly impossible to implement Roth, let alone ensure that Section 603 is implemented properly by participating employers. These plans often have hundreds of participating employers and are typically sponsored by a board of trustees (often consisting of management and labor). The role of the participating employer and the plan administrator (often a fund office) is already complex due to the required reporting, coordination, and operation of a multiemployer plan due to both the high number of participating employers and the high number of participants. These plans are further complicated due to the movement of participants among different employers participating in the plan throughout the year.

  In short, many governmental and multiemployer plans do not currently offer a Roth feature and in the absence of substantial relief, many of these plans will likely be forced to eliminate their catch-up features.

- ***2024 Repeal of Catch-Up Contributions.*** Section 603(b)(1) of SECURE 2.0 strikes Code section 402(g)(1)(C). This change has been interpreted as, in the case of 401(k)

and 403(b) plans, potentially eliminating all 414(v) catch-up contributions – whether pre-tax or Roth – beginning in 2024. It is not clear that this is correct; for example, Congress did not modify the introductory language of Code section 414(v)(1), which provides that an "applicable employer plan shall not be treated as failing to meet *any requirement of this title* solely because the plan permits an eligible participant to make additional elective deferrals in any plan year" (emphasis added). Nonetheless, there is significant uncertainty on this point. Accordingly, for potentially impacted 401(k) and 403(b) plans, the SPARK Institute requests guidance either: (1) clarifying that catch-up contributions are generally not treated as exceeding the applicable dollar amount of Code section 402(g)(1)(B);[2] or (2) indicating that IRS will apply the 414(v) catch-up contribution rules as though Congress has made any necessary technical corrections.

- ***414(v) Catch-Ups for Governmental 457(b) Plans.*** Section 603(b)(2) of SECURE 2.0 includes a conforming amendment that has been interpreted as potentially requiring all participants in governmental 457(b) plans to make 414(v) catch-up contributions as designated Roth contributions, regardless of their wages. The SPARK Institute requests guidance either: (1) clarifying that Section 603(b)(2) of SECURE 2.0 does not require participants in governmental 457(b) plans with FICA wages of $145,000 or less to make 414(v) catch-up contributions to a designated Roth account; or (2) indicating that the IRS will apply the 414(v) catch-up contribution rules as though Congress has made any necessary technical corrections.

  In resolving this, we also want to emphasize how helpful it can be to have guidance that is accessible to plan participants in plain English. This is particularly important in the context of the rules coordinating the 414(v) catch-up contribution limit with the special catch-up contribution limit described in Code section 457(b)(3).[3]

- ***15 Years of Service Catch-Ups for 403(b) Plans.*** The SPARK Institute requests confirmation that the Roth requirements of Section 603 of SECURE 2.0 do not apply to the 15 years of service catch-up contributions described in Code section 402(g)(7).

- ***Special 457(b) Catch-Ups.*** The SPARK Institute requests confirmation that the Roth requirements of Section 603 of SECURE 2.0 do not apply to the special catch-up contributions described in Code section 457(b)(3).

- ***Negative Election for Mandatory Roth Catch-Ups.*** Most plans do not require participants who are already making contributions to affirmatively elect to continue making those contributions at the start of each year. For example, once a participant

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[2] *See* Prop. Treas. Reg. 1.414(v)-1(g) (66 Fed. Reg. 53555 (Oct. 23, 2001)).

[3] As a plain English example, we would point to the description of the current 457(b) contribution limits on the IRS's website, available at: https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-457b-contribution-limits. This is a very helpful resource for our members and their clients. Accordingly, we are hopeful that Treasury and IRS will update this informal guidance, and other similar guidance, as SECURE 2.0 guidance needs are resolved.

election to defer a specific dollar amount or percentage of compensation is made, employers and plans will implement that election until a plan or Code limit is reached. This includes, for example, current elections by participants to make elective deferrals up to the applicable dollar amount, plus any increase for 414(v) catch-up contributions.

The SPARK Institute requests confirmation that employers and plan administrators can rely on negative consent to switch employee elections from pre-tax elective deferrals to designated Roth contributions in order to prevent any existing election from violating SECURE 2.0's requirement for Roth catch-up contributions. Participants who are catch-up eligible and have made any election that will result in contributions exceeding the applicable dollar limit should not be required to affirmatively elect to have catch-up contributions made to a designated Roth account, provided that any affected participants are given appropriate notice and an opportunity to change the default. This should be the case for participants who make elections in the future, as well as any participant who has previously made an election that could conflict with the new Roth contribution requirement for catch-ups. If such relief is not granted, plans may feel compelled to institute procedures that always require participants to make separate elections for regular contributions up to the applicable dollar limit and contributions that are made as catch-up contributions.

- ***FICA Wages.*** SECURE 2.0's requirement for Roth catch-up contributions only applies to eligible participants "whose wages (as defined in section 3121(a)) for the preceding calendar year from the employer sponsoring the plan exceed $145,000". Given the cross-reference to Code section 3121(a) – i.e., wages for purposes of the Federal Insurance Contributions Act (FICA) – the SPARK Institute requests confirmation that the new Roth catch-up contribution requirement does not apply to individuals who have no FICA wages – e.g., self-employed individuals. However, we believe, and request confirmation, that state and local governmental employees who have wages within the meaning of Code section 3121(a) are subject to the rule even if their employment is not subject to FICA *taxes*.

  We also request clarification on what it means to receive wages "from the employer sponsoring the plan" in the context of controlled groups. While Code section 414(v)(4)(B) does incorporate the controlled group rule, this new provision does not.

- ***ADP Testing / Recharacterization.*** Treasury Regulation section 1.414(v)-1(d)(2)(ii) states that "For purposes of the correction of excess contributions in accordance with section 401(k)(8)(C), elective deferrals under the plan treated as catch-up contributions for the plan year and not taken into account in the ADP test under paragraph (d)(2)(i) of this section are subtracted from the catch-up eligible participant's elective deferrals under the plan for the plan year." The SPARK Institute requests clarification that Roth catch-up contributions are eligible for this special recharacterization rule.

  In addition, we request guidance addressing how such a recharacterization might work in practice, as most plans will not have the results of their ADP test and will not have made

corrective distributions until March 15, which is after the W-2s for the prior year have been issued. If a plan needs to recharacterize contributions as catch-up contributions, which means that (for employees over the wage threshold) the contributions retroactively become Roth contributions, it will be too late to report those taxable contributions as taxable to the employee on a Form W-2 for the year in which the contributions were made. To address these practical issues, we recommend guidance that would permit these recharacterizations to be reported on a Form 1099-R, rather than a Form W-2. Additionally, we request guidance indicating that recharacterized amounts may be reported as taxable to the participant in the year of the recharacterization, similar to the tax treatment available to distributions of excess contributions.[4]

- ***Delayed Wage Determination / Recharacterization.*** Beyond ADP testing, there is also a separate recharacterization issue related to the Roth catch-up contribution issue for which we are seeking guidance. That is, we are concerned that there will be circumstances in which an employee will make pre-tax catch-up contributions very early in a year based on the assumption that the employee did not receive wages in excess of $145,000 in the preceding calendar year. However, it may be subsequently determined that the employee, in fact, received wages in excess of $145,000 in the preceding calendar year. To resolve this type of error, we request guidance indicating that a plan may correct this mistake by recharacterizing any previously contributed pre-tax catch-up contributions as Roth catch-up contributions that may be reported on Form 1099-R. Additionally, such treatment would be very helpful for resolving other potential scenarios involving an employee who makes pre-tax catch-up contributions when they are otherwise required to make such contributions as designated Roth contributions.

- ***Plan Design Issues.*** The SPARK Institute requests guidance on whether a plan may be drafted to require all catch-up contributions to be made as designated Roth contributions, regardless of a participant's wages. We believe that nothing in Section 603 of SECURE 2.0, or in the current law provisions of Code section 414(v), prohibit this.[5]

  We further request clarification on whether a plan may limit catch-up contributions to those employees whose wages are $145,000 or less. Put differently, if a plan has any employee with wages in excess of $145,000 and offers catch-up contributions, must the plan adopt a qualified Roth contribution program?

  The SPARK Institute also requests confirmation that a plan may restrict its qualified Roth contribution program to catch-up contributions only. Furthermore, if a plan only permits

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[4] If this type of recharacterization is permitted for ADP testing purposes or any other purpose, and it is a participant's first Roth contribution, we also request clarification on how it would impact the participant's five-taxable-year period for purposes of determining whether a distribution from a designated Roth account is a "qualified distribution".

[5] Section 603 of SECURE 2.0 requires that, if a plan offers catch-up contributions and has at least one participant over the wage limit, the plan must provide that any eligible participant may make Roth catch-up contributions. Congress did not explicitly prohibit, however, a plan requiring *all* catch-up contributions to be made on a Roth basis.

designated Roth contributions as catch-up contributions, we request guidance indicating that this design will not violate the benefits, rights, and features rules of Code section 401(a)(4), provided that designated Roth contributions are universally available to all catch-up eligible participants.

- ***Guidance for Multiemployer Plans.*** The SPARK Institute requests guidance clarifying how the $145,000 threshold for Roth catch-up contributions applies in the context of a multiemployer plan. Is it determined:
  - On a plan level (so that the compensation of participants who work for more than one participating employer or under more than one CBA in the prior year is aggregated in applying the limit);
  - On a participating employer level treating each unrelated employer separately (so a participant who worked for employer 1 in the prior year and had compensation above the threshold, and who worked for employer 2 in the prior year and had compensation below the threshold, would have to make Roth catch-up if employed by employer 1 in the current year, but not if employed by employer 2 in the current year);
  - On a CBA level (as provided in Treas. Reg. §1.401(k)-1(b)(4)(iii)(C)); or
  - Some combination of the above?

  Due to the challenge of obtaining compensation information for multiemployer plans in general, the SPARK Institute requests guidance that permits a multiemployer plan to use any of the methods above to determine whether the $145,000 threshold is met, provided such method is generally applied on a consistent basis.

C. SEP AND SIMPLE ROTH IRAS (601)

SECURE 2.0: Section 601 of SECURE 2.0 permits SEP IRAs and SIMPLE IRAs to be designated as Roth IRAs. An employee must elect for the contributions made by or on behalf of the employee to be treated as made to a Roth IRA, based on rules to be established by the IRS. Section 601 of SECURE 2.0 applies to taxable years beginning after December 31, 2022.

Guidance Request:

- ***Confirm Roth is Optional.*** It appears that the provision permitting SEP and SIMPLE Roth IRAs is optional for employers and employees. Nevertheless, the SPARK Institute requests confirmation that employers who offer SEP and SIMPLE IRAs are not required to offer employees a Roth option, and an IRA custodian or issuer is not required to offer a Roth SEP or SIMPLE IRA product simply because it offers a traditional SEP or SIMPLE IRA product.

- ***Reporting & Withholding.*** For purposes of tax reporting and withholding, the SPARK Institute requests that the IRS treat contributions to SEP and SIMPLE Roth IRAs in the same manner that elective deferrals and employer contributions are treated when contributed to a designated Roth account within a retirement plan.

- ***Impact on Regular Roth IRA Contributions.*** Section 601(a) of SECURE 2.0 strikes subsection (f) of Code section 408A. Importantly, subsection (f)(2) of Code section 408A previously clarified that, for purposes of Code section 408A, contributions to a SEP or SIMPLE IRA shall not be taken into account for purposes of the rule that says, in determining whether an individual complies with the regular Roth IRA limit, all contributions made to all IRAs on behalf of the individual are aggregated. Thus, without Code section 408A(f)(2), the SPARK Institute is concerned that SEP and SIMPLE IRA contributions – whether made to a traditional or Roth IRA – will count against an individual's regular Roth IRA contribution limit. The SPARK Institute requests guidance either: (1) clarifying that SEP and SIMPLE IRA contributions do not count against an individual's regular Roth IRA contribution limit; or (2) indicating that IRS will apply SECURE 2.0's changes as though Congress has made any necessary technical corrections.

- ***Model Forms and LRMs.*** In response to the new Roth options for SEP and SIMPLE IRAs, the SPARK Institute requests that IRS update its Form 5304 and Form 5305 series. Similarly, we request that IRS updates its listing of required modifications for SEPs and SIMPLEs. However, because there are not model forms available for Roth SEP or SIMPLE IRA, since the account type did not exist before SECURE 2.0, we request that the IRS confirm that it will treat a custodial agreement or annuity contract as compliant with the rules for SEP and SIMPLE Roth IRAs if it follows an approved model form or LRM but includes reasonable, good faith changes to reflect the provisions applicable to Roth IRAs.

D. EXPANDING AUTOMATIC ENROLLMENT IN RETIREMENT PLANS (101)

SECURE 2.0: Beginning in 2025, Section 101 of SECURE 2.0 requires 401(k) and 403(b) plans to automatically enroll participants at a minimum initial rate of 3% of compensation (maximum 10%), subject to exceptions. One of the key exceptions to this new requirement is an exception for 401(k) plans and 403(b) plans established before the date of enactment. This exception, however, does not apply to an employer that adopts a multiple employer plan after the date of enactment. In such case, SECURE 2.0's automatic enrollment requirements apply with respect to such an employer as if the plan were a single plan.

Guidance Request:

- ***When is a Plan "Established"?*** Although SECURE 2.0's automatic enrollment requirement does not apply until 2025, it impacts employers establishing or joining plans today. In this regard, SECURE 2.0 is not clear on what it means for a plan to be "established" before the date of enactment. The SPARK Institute requests confirmation that any plan adopted before the date of enactment is considered "established" for purposes of Section 101 of SECURE 2.0. This should be the case even if a plan is not effective upon adoption and even if the plan does not receive contributions upon adoption.

- ***Mergers and Spinoffs.*** The SPARK Institute requests clarification regarding the application of the mandate in the case of the merger of two single employer plans – with one plan established before the date of enactment and the other plan established after the date of enactment. We do not believe that such a merger should cause the portion of the merged plan that is attributable to the plan established before the date of enactment to lose its grandfather under Section 101(c)(2) of SECURE 2.0. Thus, for example, at a minimum, existing participants of the merging plan will not be subject to SECURE 2.0's new automatic enrollment under the surviving plan. However, we also would suggest that if the surviving plan was originally established before the date of enactment, it should not lose its reliance on its grandfather status under Section 101(c)(2) of SECURE 2.0 (i.e., existing and new participants (including the participants of the merging plan) of the surviving plan will not be subject to SECURE 2.0's new automatic enrollment mandate). In a similar regard, the SPARK Institute requests clarification that a plan will not lose its reliance on the grandfather described in Section 101(c)(2) of SECURE 2.0 merely because it is spun off from a plan that is established before the date of enactment.

- ***Merging with a MEP.*** The SPARK Institute requests clarification that SECURE 2.0's new automatic enrollment requirement does not apply to an employer that established a plan before the date of enactment and subsequently merged that plan with a multiple employer plan (MEP) after the date of enactment. Although the statute clearly prevents employers without a plan from taking advantage of a MEP to avoid the new requirement, that provision has no applicability to an employer merging a pre-existing grandfathered plan into the MEP. If this were not the law, countless plan mergers of pre-12/29/22 plans done for many reasons – such as reducing costs, simplifying plan administration, and/or business acquisitions – would become subject to a rule that was expressly structured to exempt pre-12/29/22 plans. Significantly, this would, without a technical or policy justification, penalize employers for joining a MEP.

- ***Spinoffs from a MEP.*** The SPARK Institute requests clarification that, if an employer adopts a MEP before the date of enactment and spins off its portion of the MEP to a single employer plan on or after the date of enactment, the plan will continue to be eligible for the automatic enrollment grandfather.

- ***Exception for Employers with Fewer than 10 Employees.*** The new automatic enrollment requirement only applies to employers that normally employed more than 10 employees. The SPARK Institute requests guidance on when an employer "normally employed" more than 10 employees. This could be particularly problematic to apply in the case of an employer that is fluctuating at around 10 employees. We would ask the service to consider a safe harbor rule that would take into account employers that might temporarily rise above 10 employees. Additionally, if an employer triggers the automatic enrollment requirement by "normally" employing more than 10 employees, we request guidance on whether all plan participants must be automatically enrolled, or only those participants who become eligible after the plan is newly subject to the automatic enrollment requirement.

- ***Exception for New Businesses.*** Guidance is also needed with respect to plans that are initially exempt from the automatic enrollment requirement as a "new business" in existence for less than three years. When those new businesses eventually trigger the new automatic enrollment requirement, must all plan participants be automatically enrolled, or only those participants who become eligible after the plan newly becomes subject to the automatic enrollment requirement?

- ***Plans Established After DOE and Before 2025.*** The SPARK Institute requests guidance addressing how the automatic enrollment requirement applies to a plan that is established after the date of enactment and before 2025. We would like to know, for example, whether the automatic enrollment requirement applies to all plan participants, as of the first day of the first plan year commencing on or after January 1, 2025. Or, must a plan's automatic enrollment feature only apply to those employees who become eligible on or after the first day of the first plan year commencing on or after January 1, 2025?

E. Employer Roth Contributions (604)

SECURE 2.0: Section 604 of SECURE 2.0 permits employers to offer employees the ability to designate employer matching and nonelective contributions as designated Roth contributions to a 401(a), 403(b), or governmental 457(b) plan. This option is available only for employer contributions that are vested. Section 604 of SECURE 2.0 applies to contributions made after December 29, 2022.

Guidance Request:

- ***Reporting and Taxation of Employer Contributions Designated as Roth.*** We request guidance on how employer contributions designated as designated Roth contributions must be reported. Designated Roth contributions are generally reported as income on Form W-2. In contrast, when a participant makes an in-plan Roth conversion of employer contributions (which is very similar to what Section 604 of SECURE 2.0 contemplates), this is reported on Form 1099-R. Also, we request guidance clarifying that employer contributions that are designated as Roth contributions may be taxable to a participant in the year they are made even if they pertain to the prior plan year.

- ***Employment Tax Treatment.*** We request guidance on whether employer contributions that are designated as designated Roth contributions are considered wages for purposes of FICA taxes or income tax withholding. With respect to FICA taxes, we would find it very surprising if Congress intended this election to cause the employee and employer to face additional employment taxes, and in fact, we would be very concerned that it would be borderline imprudent for an employer to even offer this feature to an employee if it resulted in the employer contribution being subject to FICA taxes.

- ***Flexibility as to Plan Procedures.*** It is critical that plans have flexibility to impose reasonable rules regarding when and how a participant can make the election to designate

employer contributions as designated Roth contributions. First, we request confirmation that a plan does not need to allow an employee to designate a portion of employer contributions; that is, a plan could impose an "all or nothing" approach. Second, we request confirmation that a plan could require that a participant make an election prior to the beginning of a plan year and require that this election be irrevocable with respect to that plan year. Third, we request confirmation that a plan could allow (but is not required to allow) participants to make this election for a subset of employer contributions, such as only allowing it for nonelective contributions and not matching contributions.

- ***Guidance on Vesting.*** Section 604 of SECURE 2.0 appears to contemplate that the election can be made only with respect to vested contributions, although it is not 100% clear. For example, new Code section 402A(a)(3) refers to "any designated Roth contribution which pursuant to the program is made by the employer on the employee's behalf and which is a nonelective contribution shall be nonforfeitable and shall not be excludable from gross income." It is not clear what this means. The references to matching contributions are somewhat clearer, as the provision defines matching contributions by saying "but only if such contribution is nonforfeitable at the time received." We request confirmation that an employer contribution does not *become* vested when a participant designates it as a designated Roth contribution. In addition, we request guidance on contributions that are partially vested. For example, if a participant is 60% vested in employer contributions, is the participant able to designate 60% of new employer contributions as Roth? We also request confirmation that a plan could decide to allow for this election solely with respect to participants that are fully vested in employer contributions and/or may (but is not required to) determine the vested percentage of the participant as of the last day of the prior plan year. Furthermore, we request guidance indicating that a plan's inability to offer Roth employer contributions to non-vested or partially vested participants does not result in impermissible discrimination in favor of HCEs.

- ***Governmental Plan.*** The SPARK Institute requests guidance addressing whether a plan must offer employees the opportunity to make elective deferrals as designated Roth contributions in order to make matching and nonelective contributions as Roth contributions pursuant to Section 604 of SECURE 2.0. For example, many governmental 401(a) plans are not eligible to offer a 401(k) feature, and therefore, are unable to offer employees the ability to elect to make designated Roth contributions. Similarly, while we believe that employer contributions that are "picked-up" under Code section 414(h)(2) would be considered employer contributions for purposes of this rule, it is unclear if a governmental 401(a) plan could offer this feature if it is not eligible to offer a 401(k) feature. A similar consideration might apply in the case of a government employer that "matches" contributions from the 457(b) plan into a 401(a) plan.

F. Pension-Linked Emergency Savings Accounts

SECURE 2.0: Section 127 of SECURE 2.0 creates a new in-plan emergency savings feature for non-highly compensated employees called a pension-linked emergency savings account (PLESA).

Guidance Request:

- ***Coordination with DOL.*** Many of the substantive conditions for offering a PLESA appear in both ERISA and the Code. Accordingly, the SPARK Institute requests that IRS and DOL coordinate on any guidance related to PLESAs, and that any PLESA guidance be issued jointly by both regulators.

- ***Non-ERISA Plans.*** Revised Code section 402(e)(1)(A) indicates that an "applicable retirement plan" that may offer a qualified Roth contribution program may include a pension-linked emergency savings account established pursuant to section 801 of the Employee Retirement Income Security Act of 1974. Based on uncertainty created by this cross-reference to ERISA, the SPARK Institute requests confirmation that non-ERISA 401(k), 403(b), and governmental 457(b) plans can establish a PLESA.

- ***Identifying HCEs.*** The ERISA and tax provisions creating the PLESA structure state that highly compensated employees (as defined in Code section 414(q)) (HCEs) are not eligible to contribute. The SPARK Institute requests guidance on this requirement, and when and how the bar for HCEs will operate. For example, the determination of whether an employee is an HCE is generally made with respect to a given plan year using data from the preceding plan year – e.g., taking into account each employee's annual compensation, the number of an employer's employees, and each employee's ownership percentage. It is not uncommon for a plan not to know which employees are HCEs on the first day of a plan year. Given these administrative realities, we specifically request that, for purposes of the PLESA eligibility and contribution rules, any guidance provide maximum flexibility so as not to disrupt or accelerate any existing practices for determining HCEs.

- ***Matching Contributions/Anti-Abuse Rule.*** New Code section 402A(e)(6) states that if a plan offers a PLESA and the employer makes matching contributions to the plan, any PLESA contributions must be treated as elective deferrals for purposes of the plan's matching formula. With regard to this requirement, new Code section 402A(e)(12) states that a plan "may employ reasonable procedures to limit the frequency or amount of matching contributions with respect to contribution to such account, solely to the extent necessary to prevent manipulation of the rules of the plan to cause matching contributions to exceed the intended amounts or frequency."

  The apparent purpose of these procedures is to avoid a situation in which an employee contributes to a PLESA, receives a match, withdraws and recontributes the initial PLESA contribution, and receives a second match on for what are effectively the same dollars.

To address this problem, the SPARK Institute requests guidance indicating that plans can impose the following restriction: if a participant receives a distribution of PLESA amounts that were matched when initially contributed, the participant may only receive matching contributions for future PLESA contributions to the extent that any future PLESA contributions exceed the amount of the distribution of previously matched PLESA dollars.

- ***$2,500 Limit.*** New Code section 402A(e)(3)(A) states that "no contribution shall be accepted to a [PLESA] to the extent such contribution would cause the portion of the account balance attributable to participant contributions to exceed the lesser of — (i) $2,500; or (ii) an amount determined by the plan sponsor of the [PLESA]." The SPARK Institute requests clarification on whether "the portion of the account balance attributable to participant contributions" includes or excludes earnings in a PLESA. Additionally, the SPARK Institute requests confirmation that, if a participant with a PLESA account balance in excess of $2,500 takes a PLESA distribution that causes their account to fall below $2,500, the participant can subsequently contribute to a PLESA until the $2,500 limit (or any plan limit) is reached.

- ***Rollover Treatment.*** New Code section 402A(e)(10) states that following a participant's termination of employment or the termination of a PLESA, a distribution from a PLESA generally shall be treated as an eligible rollover distribution. Accordingly, we understand that a PLESA distribution, in this circumstance, may be directly rolled over to a designated Roth account or Roth IRA. Indirect rollovers, however, do not appear permitted because all PLESA distributions are treated as qualified distributions and distributions from designated Roth accounts are only permitted to be indirectly rolled over to the extent that the distribution is includible in income.[6] The SPARK Institute requests confirmation that a PLESA distribution, in this circumstance, will be treated in the same manner as any other eligible rollover distribution from a designated Roth account.

  Notwithstanding the general rule treating a PLESA distribution as an eligible rollover distribution following a participant's termination of employment or the termination of a PLESA, new Code section 402A(e)(10)(B) says that such a distribution is not an eligible rollover distribution for purposes of 401(a)(31)(B). Because there is no exception from Code section 401(a)(31)(A), we assume that plans must offer distributions in this instance as a direct rollover. Nevertheless, the SPARK Institute requests confirmation that our understanding is correct.

- ***Cash-Out Limits.*** The SPARK Institute request guidance indicating whether amounts held in a PLESA must be taken into account when determining the present value of a participant's nonforfeitable accrued benefit for purpose of the cash-out rules in Code section 411(a)(11)(A).

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[6] See Treas. Reg. section 1.402A-1, Q&A-5.

- ***Automatic Enrollment.*** SECURE 2.0 permits employers to automatically enroll employees into making a contribution of up to 3% of compensation to a PLESA. We request maximum flexibility on how automatic enrollment under a PLESA interacts with the automatic enrollment provision of Section 101 of SECURE 2.0.

G. EPCRS CHANGES (305)

SECURE 2.0: Section 305 of SECURE 2.0 make a series of changes to the Employee Plans Compliance Resolution System (EPCRS), including a change that generally permits any eligible inadvertent failure to be self-corrected under EPCRS. The provision also directs IRS to expand EPCRS to cover failures involving IRAs. The provision requires EPCRS to be revised to take into account its changes no later than two years after the date of enactment.

Guidance Request:

- ***Effective Date.*** The SPARK Institute requests confirmation that the EPCRS changes for retirement plans are effective as of the date of enactment, and that plans can rely on those changes before IRS publishes a revised version of EPCRS. In a similar regard, we are requesting clarification that SECURE 2.0's EPCRS changes are available for failures that occurred before the date of enactment, and regardless of when the correction occurred.

- ***Plan Document Failures.*** The SPARK Institute requests confirmation that plan document failures are a type of "eligible inadvertent failure" that may be self-corrected under Section 305 of SECURE 2.0. Additionally, any operational failure that is corrected by retroactive plan amendment should also qualify for this relief.

- ***Loan Failures.*** The SPARK Institute requests confirmation that all loan failures, and not just those failures that create a deemed distribution, are eligible inadvertent failures that may be self-corrected under Section 305 of SECURE 2.0.

- ***Correcting Overpayments.*** Section 301 of SECURE 2.0, through amendments to ERISA, imposes a series of new limitations on plan fiduciaries who seek the recoupment of inadvertent overpayments made to participants and beneficiaries. This includes, for example, a limitation on the percentage of an overpayment that may be sought each year and a limitation on the amount by which any recoupment may reduce future benefit payments received in the form of an annuity. These new fiduciary limitations will apparently prevent ERISA-covered plans from using existing EPCRS correction methods that have permitted plans to use an actuarial adjustment to recoup an overpayment from an ongoing annuity. The SPARK Institute requests guidance identifying whether and how SECURE 2.0's new overpayment limitations impact correction methods that are described in the most recent version of EPCRS – Rev. Proc. 2021-30. The SPARK Institute is requesting confirmation that the limitations do not apply to overpayments that result from a late notification of death, as this would be unduly burdensome to survivors, to keep the estate open for a minimum of 10 years.

Additionally, to the extent that a plan opts not to seek the recoupment of an overpayment, the SPARK Institute requests guidance clarifying whether such decisions implicate any nondiscrimination rules or other rules that would require consistency.

H. Safe Harbor for Elective Deferral Corrections (350)

SECURE 2.0: Section 350 of SECURE 2.0 makes permanent and expands the temporary relief that is currently available under EPCRS for correcting failures related to an automatic contribution feature.

Guidance Request:

- ***Effective Date.*** The SPARK Institute requests confirmation that the relief described in Section 350 of SECURE 2.0 is available for errors for which the required correction date is after December 31, 2023. That is, the relief is not limited to failures that occur after December 31, 2023. This clarification is particularly important for governmental 457(b) plans for which this correction method is not currently available under EPCRS.

I. In-Service Distributions, 10% Penalty Exceptions, & Repayment Rights

SECURE 2.0: SECURE 2.0 creates a series of new: (1) in-service distribution rights; (2) 10% penalty exceptions; and (3) special repayment rights. This includes, for example, the new in-service distribution rights, 10% penalty exceptions, and special repayment rules for "emergency personal expense distributions" (Section 115) and "eligible distributions to a domestic abuse victim" (Section 314), both of which become effective in 2024.

Guidance Request:

- ***Optional Distribution Rights.*** The SPARK Institute requests confirmation that all of the in-service distribution rights created by SECURE 2.0 are optional.

- ***Anti-Cutback Relief.*** The SPARK Institute requests guidance indicating that any plan making available one of SECURE 2.0's new in-service distribution rights will not violate Code section 411(d)(6) by prospectively eliminating such rights. This relief should extend to: (a) emergency personal expense distributions (Section 115); (b) eligible distributions to a domestic abuse victim (Section 314); (c) qualified disaster recovery distributions (Section 331); and (d) qualified long-term care distributions (Section 334). Moreover, similar relief should be extended to plans that make available qualified birth or adoption distributions, as added by Section 113 of SECURE 1.0. We do not see any reason to treat these types of distributions differently from hardship distributions especially since, in some cases, the same events triggering SECURE 2.0's new in-service distribution rights would also qualify for a hardship distribution. Thus, similar to the treatment of hardship distributions, the prospective elimination of any such features

should not violate the anti-cutback rule.[7] Without such relief, many plans may be reluctant to offer these new features.

- ***Self-Certification for New In-Service Distribution Rights.*** For all of the new in-service distribution rights created by SECURE 2.0, the SPARK Institute requests confirmation that plan administrators are permitted to rely on a participant's certification that he or she qualifies for the new-in service distribution, unless the administrator has actual knowledge to the contrary.

- ***Repayment Rights.*** SECURE 2.0 creates a series of new repayment rights for certain types of distributions. These repayment rights are similar to the repayment rights available for QBADs. If a plan participant or IRA owner repays one of these distributions within three years, then the individual is treated as having received the distribution as an eligible rollover distribution (to the extent of the amount of the contribution) and as having transferred the recontribution amount in a direct trustee-to-trustee transfer within 60 days of the distribution, meaning the recontribution amount is not includible in income.

  The SPARK Institute requests clarification that, when accepting these repayments, including repayments of distributions made to terminally ill individuals, plan administrators may rely on an individual's certification that he or she received a type of distribution that is eligible for one of SECURE 1.0's or SECURE 2.0's new extended repayment rights, unless the administrator has actual knowledge to the contrary. This would be consistent with the positions announced by the IRS with regard to similar repayments rights previously made available by Congress.[8]

- ***Good-Faith Reporting Relief.*** SECURE 2.0's new 10% penalty exceptions and recontributions rules will require updates to many of the IRS's tax reporting Forms and Instructions (e.g., Form 1099-R and Form 5498). Until the IRS publishes those updates, the SPARK Institute requests relief for any reporting that occurs in accordance with a reasonable, good-faith interpretation of the existing reporting rules that apply to similar 10% penalty exceptions and recontribution rights – e.g., QBADs and qualified disaster distributions.

  For example, some of the new 10% penalty exceptions for individuals under age 59½, such as the exceptions for emergency personal expense distributions and eligible distributions to a domestic abuse victim, seem similar to QBADs, which are reported for individuals under age 59½ using Code 1 (early distribution, no known exception) in Box 7 of Form 1099-R. In contrast, other new 10% penalty exceptions, such as the new exceptions for qualified public safety employees and private sector firefighters, seem similar to existing exceptions that are currently reported for individuals under age 59½

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[7] *See* Treas. Reg. section 1.411(d)-4, Q&A-2(b)(2)(x).

[8] *See* Notice 2005-92, Section 3.B and Notice 2020-50, Section 3.B.

using Code 2 (early distribution, exception applies) in Box 7 of Form 1099-R. The point of these examples is to illustrate that all of these new changes are not clearly addressed by existing reporting guidance and IRS should provide flexibility to payors that are trying to implement these changes based on a reasonable, good-faith interpretation of existing guidance.

- ***Terminally Ill Individuals.*** Section 326 of SECURE 2.0 adds a new 10% penalty exception for distributions made to terminally ill individuals. In order to qualify for this exception, a physician must certify that the employee has a terminal illness prior to the distribution. Additionally, the employee must furnish sufficient evidence to the plan administrator in such form and manner determined by the Secretary of the Treasury. This provision applies to distributions made after the date of enactment.
    - The SPARK Institute requests confirmation that, absent a legislative technical correction, Section 326 of SECURE 2.0 does not create a new in-service distribution right. Thus, in the case of a distribution from a retirement plan, a participant would only be eligible for the new 10% penalty exception for terminally ill individuals if the participant is otherwise eligible to receive a distribution (e.g., because he or she has attained age 59½, is disabled, or has separated from service).
    - If it is confirmed that Section 326 does not create a new in-service distribution right, it would be helpful for the IRS to explain *why* it believes it is necessary for an employee to furnish evidence of terminal illness to the plan administrator. To the extent that Section 326 of SECURE 2.0 does not create a new in-service distribution right, there is no need to collect this evidence to allow for the distribution. We also assume that Form 1099-R will not require the use of a particular code for the distribution. Similar distributions (such as qualified birth and adoption) are not subject to any special reporting. Thus, we remain confused why there is any need for the plan administrator to have this evidence.
    - The SPARK Institute requests clarification that the requirement to furnish "sufficient evidence to the plan administrator" does not apply to IRAs.
    - The SPARK Institute requests clarification on what constitutes "sufficient evidence," as well as relief for reasonable, good-faith interpretations until such clarification is provided.
    - To the extent that Section 326 does not give rise to a new distribution right but the IRS decides to require the information to be provided, the SPARK Institute requests clarification that plan administrators and IRA issuers, custodians, and trustees are not required to review and assess evidence submitted by plan participants and IRA owners in support of the exception. The new relief is exclusively an individual income tax matter and should not require additional review by a plan administrator or IRA issuer, custodian, or trustee.

- ***Emergency Personal Expense Distributions.*** Section 115 of SECURE 2.0 adds a new in-service distribution right, 10% penalty exception, and repayment right for emergency personal expense distributions of up to $1,000. If an individual takes an emergency personal expense distribution from a plan or IRA, the individual is not permitted to take

another emergency distribution from such plan or IRA during the immediately following three calendar years from the same plan or IRA unless the individual (1) has repaid the distribution back to the same plan or IRA or (2) has subsequently made contributions to the same plan or IRA in an amount at least equal to the amount of the prior emergency distribution that has not been repaid.

In this context, the SPARK Institute requests clarification that any rollover or transfer to a plan equal or exceeding the amount of an emergency personal expense distribution taken within the past three years will be treated as though such distribution is "fully repaid".

Additionally, we are requesting confirmation that the three-year bar for having additional distributions treated as emergency personal expense distributions applies independently to each IRA owned by an IRA owner. Thus, IRAs would not be aggregated for purposes of this rule.

- ***LTC Distributions.*** Section 334 of SECURE 2.0 adds a new in-service distribution right and 10% penalty exception for certain retirement plan distributions used to purchase certified long-term care (LTC) insurance. The changes made by Section 334 of SECURE 2.0 apply to distributions made after three years after the date of enactment. The SPARK Institute requests clarification on whether the new 10% penalty for LTC insurance applies to distributions made from IRAs.

- ***New Exception for 25 Years of Service.*** Section 329 of SECURE 2.0 modifies the exception from the 10% additional tax for qualified public safety employees so that it also applies to employees with "25 years of service under the plan." We request guidance on the meaning of service "under the plan." This is particularly important in the case of defined contribution plans, where the benefit is not determined by years of service—years of service is relevant only for eligibility and vesting. Thus, we request guidance on whether years of service means service for vesting purposes or years of *participation* in the plan. Additionally, we request guidance on whether service "under the plan" may be recognized if an employee earned a year of service under the plan for services provided to a different employer?

- ***EDDAVs.*** Section 314 of SECURE 2.0 creates a new in-service distribution option, 10% penalty exception, and special repayment right for an eligible distribution to a domestic abuse victim (EDDAV). In general, a distribution of up to $10,000 may be treated as an EDDAV if the distribution is made within one year of the date on which an individual is a victim of domestic abuse by a spouse or domestic partner.

    - Distribution Frequency. The SPARK Institute requests confirmation that EDDAVs are not limited to a single distribution within the one-year eligibility period referred to in the statute.

- 50% Limit. Section 314 of SECURE 2.0 caps the amount available to any individual as an EDDAV to the lesser of: (1) $10,000; or (2) 50% of the participant's nonforfeitable benefit. The SPARK Institute requests clarification on when the 50% limit is to be determined. For example, it could be determined when the distribution is requested or when the distribution is actually made. We urge the IRS to clarify that the 50% limit may be determined at either point.

- Eligible Plans. EDDAVs may not be made from a defined benefit plan or a plan that is subject to the Qualified Joint and Survivor Annuity (QJSA) or Qualified Pre-Retirement Survivor Annuity (QPSA) requirements. With regard to this requirement, the SPARK Institute requests guidance that:

  - (1) clarifies that if a portion of a plan is subject to the QJSA and QPSA rules – e.g., a portion of a plan attributable to a merged money purchase plan – EDDAVs can nevertheless be offered from any *other* portion of the plan that is not subject to those requirements; and

  - (2) clarifies that any plan that voluntarily imposes a spousal consent requirement that is not required by Code sections 401(a)(11) or 417 may waive or eliminate the spousal consent requirement for distributions to victims of domestic abuse.

J. SAFE HARBOR 402(f) NOTICES

SECURE 2.0: SECURE 2.0 includes many new provisions that will require an update to the model 402(f) notices that were last updated and published by IRS in Notice 2020-62. This includes, for example, SECURE 2.0's changes to the RMD rules and its new exceptions to the 10% penalty on early distributions.

Guidance Request:

- ***Updated 402(f) Notices.*** The SPARK Institute requests updated model 402(f) notices incorporating all of the changes made by SECURE 2.0. In preparing this update, we also encourage IRS to incorporate as many relevant changes as possible, rather than merely limiting any model notices to those changes that are effective in 2023. Each time IRS issues new models, retirement plan recordkeepers must incorporate any changes into their existing notices. IRS can help make this process more efficient by not only issuing models that address those changes that are effective in 2023, but by also addressing those issues that are effective in 2024 and beyond. However, if all changes are included, regardless of the year in which they become effective, it will be important for any model language to clearly indicate when any changes become effective.

K. QLAC REFORMS (202)

SECURE 2.0: Section 202 of SECURE 2.0 increases the QLAC premium limit from $125,000 to $200,000, and eliminates the regulatory restriction that previously limited QLAC premiums to 25% of an individual's account balance under a plan or IRA. These changes apply prospectively to contracts purchased or received in an exchange on or after the date of enactment.

Section 202 of SECURE 2.0 also clarifies that a divorce occurring after a QLAC is purchased but before payments commence will not affect the permissibility of the joint and survivor benefits previously purchased under the contract if a qualified domestic relations order (QDRO) (in the case of a retirement plan) or a divorce or separation instrument (in the case of an IRA): (1) provides that the former spouse is entitled to the promised spousal benefits under the QLAC; (2) provides that the former spouse is treated as a surviving spouse for purposes of the contract; (3) does not modify the treatment of the former spouse as the beneficiary under the QLAC; or (4) does not modify the treatment of the former spouse as the measuring life for the survivor benefits under the QLAC. This change applies retroactively to the effective date of the original QLAC regulations.

Guidance Request:

- ***Effective Date for Premium Limits.*** The SPARK Institute requests clarification that, even though the QLAC premium increases are effective upon enactment, QLACs issued before the date of enactment can be amended or exchanged after the date of enactment to reflect the increased premium limits.

- ***Self-Certification for QDROs and Divorce Decrees.*** The SPARK Institute requests clarification that, for purposes of SECURE 2.0's changes impacting QLACs with joint and survivor annuity benefits, plan administrators and annuity issuers may rely on representations from QLAC owners regarding whether a QDRO or divorce or separation instrument satisfies the requirements of Section 202(a)(3)(A)-(D) of SECURE 2.0.

L. RMD RELIEF FOR PARTIAL ANNUITIZATION (204)

SECURE 2.0: Section 204 of SECURE 2.0 provides that, where a portion of an interest in an individual account defined contribution plan is distributed in the form of annuity payments, and the annuity payments exceed the amount that would be required to be distributed under the individual account rules based on the value of the annuity, the excess annuity payment amount for a year can be applied towards the RMD for the year with respect to any remaining non-annuitized interest in the same retirement plan. Section 204 of SECURE 2.0 also extends similar treatment to IRAs. The provision directs IRS to amend its regulations in accordance with this rule, and deems those regulatory amendments as having been made as of the date of enactment.

Until the regulations are amended, taxpayers may rely on their reasonable, good-faith interpretations.

Guidance Request:

- ***Annuity Valuation.*** In order to use this relief, the value of any annuity contracts purchased with a portion of an individual account defined contribution plan and the value of any individual retirement annuities purchased by an individual must be calculated. The SPARK Institute requests guidance from Treasury and IRS that would enable plans and participants to, in some standardized fashion, calculate the value of any purchased annuities to address situations in which an annuity insurer does not otherwise provide these valuations. The SPARK Institute also requests guidance indicating that, until further guidance is issued, taxpayers may rely on annuity valuations determined by a plan administrator, contract issuer, or actuary using reasonable, good faith actuarial methods and assumptions.

- ***IRA Reporting.*** The SPARK Institute also requests clarification that Section 204 of SECURE 2.0 does not affect the manner in which IRA issuers are required to report information about RMDs on Form 5498 or any associated annual statement.

- ***Distributed Annuities.*** The SPARK Institute requests clarification that, in accordance with Section 204 of SECURE 2.0, payments received from a distributed annuity contract that was distributed from an individual account defined contribution plan can be treated as an "annuity amount," and used to calculate the alternative RMD obligation contemplated by Section 204 of SECURE 2.0. In this regard, the plan should be permitted to rely on a participant's or annuity issuer's representations regarding the value of any distributed annuity for purposes of calculating the "total required amount."

M. REDUCED RMD EXCISE TAX (302)

SECURE 2.0: Section 302 of SECURE 2.0 reduces the RMD excise tax from 50% to 25%. Additionally, the RMD excise tax may be further reduced to 10% if, during the "correction window," the taxpayer receives a distribution of the missed RMD "from the same plan to which such tax relates." The last day of the correction window is the earliest of: (1) the date of mailing a notice of deficiency with respect to the excise tax; (2) the date on which the excise tax is assessed; or (3) the last day of the second taxable year that begins after the end of the taxable year in which the excise tax is imposed. Section 302 applies to taxable years beginning after the date of enactment.

Guidance Request:

- ***Corrective Distributions from IRAs.*** For purposes of the 10% penalty for corrective distributions made "from the same plan to which such tax relates," the SPARK Institute requests that the IRS treat all IRAs maintained on behalf of an IRA owner as a single plan. This rule would be consistent with the IRS's current interpretations permitting IRA

owners to satisfy the RMD rules by taking distributions from any one or more of their IRAs.[9]

- ***Correction Window.*** The SPARK Institute requests clarification on when the RMD excise tax is "imposed" for purposes of the correction window.

N. Charitable Distributions (307)

SECURE 2.0: Section 307 of SECURE 2.0 indexes the $100,000 limit on the exclusion for qualified charitable distributions described in Code section 408(d)(8). The provision also expands the exclusion for qualified charitable distributions to newly allow for a one-time distribution of up to $50,000 from an individual retirement account to a "split-interest entity." Section 307 of SECURE 2.0 applies to distributions made in taxable years beginning after the date of enactment.

Guidance Request:

- ***Dollar Limits.*** The SPARK Institute requests clarification on whether the new $50,000 exclusion for distributions made to a split-interest entity is available in addition to, or as part of, the $100,000 exclusion for qualified charitable distributions.

- ***Individual Retirement Annuities.*** The new exclusion for distributions made to split interest entities in new Code section 408(d)(8)(F) expressly applies to distributions from an "individual retirement account." In contrast, the general definition of the term qualified charitable distribution in Code section 408(d)(8)(B) covers a distribution from an "individual retirement plan," which is defined to mean an individual retirement account or individual retirement annuity. The SPARK Institute requests clarification on whether the new exclusion for distributions to split-interest entities is available to distributions from individual retirement annuities.

O. Automatic Disaster Relief (331)

SECURE 2.0: Section 331 of SECURE 2.0 permits retirement plan participants and IRA owners to receive qualified disaster recovery distributions (QDRDs) of up to $22,000. For any distribution that is a QDRD, SECURE 2.0: (1) permits in-service distributions, even if such amounts are not otherwise distributable from the plan; (2) provides an exception to the 10% early distribution tax; (3) exempts the distribution from the 402(f) notice requirements, direct rollover rules, and mandatory 20% withholding applicable to eligible rollover distributions; (4) permits individuals to include income attributable to the distribution over the three-year period beginning with the year the distribution would otherwise be taxable; and (5) permits recontribution of the distribution to a plan or IRA within three years, in which case the recontribution is generally treated as a direct trustee-to-trustee transfer within 60 days of the distribution.

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[9] Treas. Reg. section 1.408-8, Q&A-9.

Section 331 of SECURE 2.0 also permanently makes available loan relief to any "qualified individual" whose principal place of abode during any disaster is located in a disaster area and who sustains an economic loss by reason of the disaster.

Guidance Request:

- ***Confirm Disaster Relief is Optional.*** Consistent with ad hoc relief enacted in response to prior disasters, the SPARK Institute requests confirmation that plans are not required to permit QDRDs or to offer the disaster-related loan relief made available under Section 331 of SECURE 2.0.

- ***Allow Self-Certification.*** We request confirmation that a plan administrator can accept a certification from a participant that he or she (a) has a principal place of abode located in a disaster area and (b) sustained an economic loss by reason of the disaster, unless the plan administrator has actual knowledge to the contrary. Further, we ask that the Service confirm that in situations where the participant's address on the recordkeeping system is not in the disaster area, and the participant certifies that their principal abode is in the disaster area, that this alone would not constitute "actual knowledge to the contrary."

- ***Dollar Limit.*** The SPARK Institute requests clarification on whether the $22,000 limit on QDRDs is a lifetime limit or a per disaster limit.

- ***Qualified Disaster Area.*** In order to be eligible for the automatic disaster relief described in Section 331 of SECURE 2.0, a plan participant or IRA owner must have his or her principal place of abode located in a "qualified disaster area." For this purpose, it appears that a qualified disaster area includes *any* area for which "a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act".[10] The SPARK Institute requests confirmation that any major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act qualifies for SECURE 2.0's automatic disaster relief. Therefore, a qualified disaster area would include any area that is eligible for individual or public assistance, not just those areas that have been designated by FEMA for individual assistance.

- ***Extended Loan Repayments.*** Consistent with guidance interpreting similar relief in the past, the SPARK Institute requests guidance clarifying that SECURE 2.0's provisions providing a one-year delay for certain loan repayments may be administered as a suspension of loan repayments, with a loan term extension and reamortization upon resumption, rather than a straight delay of such payments.[11]

[10] Code section 72(t)(11)(E) & (F).

[11] *See e.g.,* Notice 2005-92, Section 5.B; Notice 2020-50, Section 5.B.

- ***DOL Coordination.*** In the case of certain qualified individuals affected by disasters, Section 331(c)(1) of SECURE 2.0 increases the maximum permissible loan amount to the lesser of: (1) $100,000; or (2) the greater of $10,000 or 100% of the present value of the participant's nonforfeitable accrued benefit. Department of Labor (DOL) regulations, however, generally require plan loans to be secured by no more than half of the participant's account balance.[12] In response to similar relief in the past, DOL has indicated that it will not treat any person as violating ERISA solely because a loan was made to a qualified individual in accordance with retirement-related disaster relief. The SPARK Institute encourages Treasury and IRS to coordinate with DOL to provide similar guidance in relation to Section 331 of SECURE 2.0.

P. Student Loan Payments (110)

SECURE 2.0: Section 110 of SECURE 2.0 permits employers to make matching contributions under a 401(k) plan, 403(b) plan, governmental 457(b) plan, or SIMPLE IRA with respect to "qualified student loan payments," which are generally defined as a payment made by an employee in repayment of indebtedness incurred by the employee solely to pay qualified higher education expenses. This provision applies to plan years beginning after December 31, 2023.

Guidance Request:

- ***Eligible Loans.*** Section 110 states that a loan must be a qualified education loan as defined in Code section 221 which is "incurred by the employee to pay qualified higher education expenses." We request guidance on the meaning of this phrase and confirmation that the phrase includes loans incurred by a parent to pay the qualified higher education expenses of a child. In addition, we believe that any individual who cosigned on a qualified education loan and thus is legally obligated to the lender can be treated as having "incurred" the loan. This interpretation would be consistent with the definition of qualified education loan in Code section 221(d)(1), which defines a qualified education loan to include not only indebtedness incurred on behalf of a taxpayer, but also indebtedness incurred "on behalf of . . . the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred."

- ***General Timing Issues.*** Section 110 of SECURE 2.0 directs IRS to issues regulations that permit employers to establish reasonable procedures to claim matching contributions for qualified student loan payments, including an annual deadline (not earlier than three months after the close of each plan year) by which a claim must be made.

    - Flexibility. In issuing any guidance on this topic, SPARK encourages IRS to provide employers with maximum flexibility in terms of when matching contributions must be made in relation to qualified student loan payments. For example, we request guidance specifying that employers are not required to make matching contributions for student loan payments any more frequently than

[12] Labor Regulation section 2550.408b-1(f)(2)(i).

annually, and explaining how to determine such matching contributions if the plan provides that general matching contributions are determined separately with respect to each payroll, but "qualified student loan payments" are made less frequently.

- Timing for Safe Harbor Matching Contributions. Under Treasury Regulation section 1.401(k)-3(c)(5)(ii), a plan may determine safe harbor matching contributions separately with respect to each payroll period (or with respect to all payroll periods ending with or within each month or quarter of a plan year) provided that safe harbor matching contributions with respect to any elective contributions made during a plan year quarter are contributed to the plan by the last day of the immediately following plan year quarter. Pursuant to that requirement, a safe harbor matching contribution is timely deposited if it is made by the last day of the quarter that immediately follows the elective contribution to which it relates. The SPARK Institute requests relief from this timing rule when safe harbor matching contributions are made with respect to "qualified student loan repayments."

- ***ADP Timing Issues.*** Section 110 of SECURE 2.0 permits plans to apply the ADP test separately to employees who receive matching contributions on student loan repayments. Importantly, ADP testing failures may be corrected by distributing excess contributions no later than 12 months after the close of the plan year. However, in order to avoid a 10% excise tax, a plan generally must distribute any excess contributions within 2½ months of the end of the plan year.[13]

  Because the statute envisions a three-month window after the close of the plan year for participants to claim a matching contribution for qualified student loan payments, plans will not know which employees can be tested separately prior to the deadline for penalty-free distributions of excess contributions. Accordingly, the SPARK Institute requests relief from this 2½ month distribution deadline in order to address the timing issues created by employees who receive matching contributions on student loan repayments.

- ***Application to Safe Harbor Plans.*** There has been some confusion about the application of Section 110 of SECURE 2.0 to safe harbor plans. SECURE 2.0 confirms that for purposes of the safe harbor rules, a plan may treat a qualified student loan payment as an elective deferral. What is less clear is what flexibility, if any, a safe harbor plan might have with respect to matching contributions on student loan repayments beyond the normal safe harbor contributions. For example, although safe harbor plans generally cannot impose a last day of the plan year requirement for matching contributions, we believe that it would not violate the safe harbor rules to impose a last day of the plan year rule for these student loan matching contributions. In addition, we request guidance on the extent to which this plan feature must be described in the safe harbor notice.

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[13] Code section 4979(f)(1).

- ***Certification of Student Loan Payments.*** Section 110 seems to assume that the amount of student debt repayments on which a match is based will be determined solely by having an employee provide the amount to the plan and certify as to its correctness. However, independent confirmation of student loan repayments already exists in the market today. We request that Treasury and IRS confirm that reasonable procedures to claim matching contributions, to the extent required or adopted, may include a requirement for participants to register eligible loans with the employer so that the employer may track payments made throughout the year, provided that the employer provides participants an opportunity to review and correct any payment information collected. We also request guidance that this process satisfies the requirement for a participant to annually certify their student loan payments.

- ***Student Loan Match Forfeiture.*** Student loan payments can be returned or reversed for a variety of reasons. Treasury and IRS should clarify that student loan matches are not required to be forfeited after the employee has certified the loan repayments to which they relate. The purpose of permitting a match is to help the employee save for retirement while experiencing the burden of making loan repayments. A match made on the basis of a payment actually made in good faith should therefore be permitted to remain in the plan.

Q. SPOUSAL BENEFICIARY LIFE EXPECTANCIES (327)

SECURE 2.0: Section 327 of SECURE 2.0 permits spousal beneficiaries to elect to have RMDs determined using the Uniform Lifetime Table (ULT), rather than the Single Life Table (SLT). This will effectively lengthen the distribution period for spousal beneficiaries who are treated as beneficiaries for purposes of the RMD rules. Section 327 of SECURE 2.0 applies to calendar years beginning after December 31, 2023.

Guidance Request:

- ***Spousal Elections.*** As revised by Section 327 of SECURE 2.0, the Code's RMD rules will permit the spousal beneficiary of a participant or IRA owner who died before their RBD to: (1) delay the start of stretch distributions until the decedent would have attained his or her RMD age; (2) calculate stretch payments using the ULT; and (3) if the spouse dies before stretch distributions must commence, apply the RMD rules to the spouse's beneficiaries as if the spouse were the employee. All of these rights, however, appear to be conditioned upon the spouse electing such treatment at such time an in such manner as prescribed by the Secretary. This is a change from current practice—under prior law, a spouse generally did not need to make an election to delay the RMD date until the date the participant would have reached the RMD age. According to SECURE 2.0, such elections shall include timely notice to the plan administrator, and once made may not be revoked except with the consent of the Secretary. The SPARK Institute requests guidance expressly permitting spouses to negatively elect the rights described in (1) and (3) above. Although we believe that Congress clearly intended to add an election for

surviving spouse beneficiaries who wish to use the ULT, the legislative intent is less clear with regard to the other rights contemplated above.

The SPARK Institute also requests guidance confirming that if an employee dies before his or her RBD, a surviving spouse's receipt of a distribution in a year before Code section 401(a)(9) requires a distribution does not prevent the spouse from satisfying the RMD rules under the new 10-year rule or by electing to delay the commencement of annual distributions until the year in which the employee would have attained his or her RMD age.

We also request guidance expressly indicating *when* a surviving spouse may or must make the election (or elections) contemplated within Section 327 of SECURE 2.0. For example, must the election be made before RMDs commence? Or, could a spouse begin receiving RMDs based on the SLT and elect in later years to switch to the ULT.

- ***Spousal Beneficiaries Currently Receiving RMDs.*** The SPARK Institute requests guidance on whether a spousal beneficiary that started receiving RMDs prior to 2024 as a result of a participant's death prior to 2023 can make an election to switch from having RMDs calculated using the SLT to the ULT.

- ***Required Beginning Date.*** In the case of a participant who dies before his or her required beginning date, the SPARK Institute requests confirmation that the new spousal election does not permit a surviving spouse to delay the commencement of distributions until the *surviving spouse's* RBD.

- ***Alternate Payees.*** The SPARK Institute requests confirmation that an alternate payee who is a former spouse is eligible to make the spousal election described in Section 327 of SECURE 2.0.

- ***Confirm Optional.*** The SPARK Institute requests confirmation that plans are permitted, but not required, to offer this election to spouses.

R. INCREASED CASH-OUT LIMIT / VOLUNTARY DISTRIBUTIONS FROM 457(b) PLANS (304)

SECURE 2.0: Section 304 of SECURE 2.0 raises the mandatory cash-out limit in Code section 411(a)(11)(A) from $5,000 to 7,000. This change applies to distributions made after December 31, 2023.

The dollar figure in Code section 411(a)(11)(A) is not only relevant for purposes of the mandatory cash-out rules, it is also cross-referenced in Code section 457(e)(9), which permits participants in tax-exempt 457(b) plans to voluntary elect to receive up to the amount described in Code section 411(a)(11)(A) in certain circumstances. Through Code section 457(d)(3), this election is also available to participants in governmental 457(b) plans.

Guidance Request:

- ***Voluntary Cash-Outs for 457(b) Plans.*** The SPARK Institute requests confirmation that the increased cash-out limit in Code section 411(a)(11)(A) automatically increases the voluntary cash-out rules described in Code section 457(e)(9) and 457(d)(3).

S. RMD EXEMPTION FOR IN-PLAN ROTH AMOUNTS (325)

SECURE 2.0: Section 325 of SECURE 2.0 exempts in-plan Roth amounts from the lifetime RMD rules, similar to the longstanding exemption for Roth IRAs. This change generally applies to taxable years beginning after December 31, 2023.

Guidance Request:

- ***General Application.*** The SPARK Institute requests confirmation that designated Roth accounts may be completely disregarded for purposes of the lifetime RMD rules. That is, we are seeking confirmation that designated Roth accounts are not only exempt from having to make any lifetime distributions, they are also excluded from any RMD calculation that must be made on behalf of a participant who has pre-tax and Roth amounts.

  In a similar regard, we are requesting confirmation that any amounts voluntarily distributed from an in-plan designated Roth account during a participant's lifetime do not satisfy any RMD obligation that is attributable to a plan participant's separate pre-tax interest in the plan.

- ***Application to Beneficiaries.*** The SPARK Institute requests confirmation that, following the death of a participant who has a designated Roth account, the designated Roth account does not create any RMD obligation for the participant or any beneficiaries or alternate payees for the year of the participant's death.

- ***Application to Alternate Payees.*** The SPARK Institute requests guidance addressing how the new exemption for in-plan Roth amounts applies to alternate payees. That is, while an employee with an in-plan Roth account is alive and exempt from the RMD rules, any in-plan Roth amount of an alternate payee of such employee should similarly be exempt from the RMD rules under the principles described in Treasury Regulation section 1.401(a)(9)-8, Q&A-6. Following the death of the employee, we would expect that the alternate payee would be subject to the RMD rules that apply after the death of the employee.

- ***Application to Participants in Pay Status.*** The SPARK Institute requests confirmation that participants that started receiving RMDs attributable to in-plan Roth amounts for taxable years prior to 2024 will no longer be required (or permitted) to fund RMDs from in-plan Roth amounts.

T. Self-Certification for Hardship Withdrawals (312)

SECURE 2.0: Section 312 of SECURE 2.0 permits administrators of 401(k) and 403(b) plans to rely on an employee's written certification that a distribution is being made on account of one of the seven safe harbor hardship expenses described in IRS regulations. In a similar regard, Section 312 of SECURE 2.0 permits administrators of governmental 457(b) plans to rely on a participant's written certification that a distribution is being made when a participant is faced with an unforeseeable emergency of a type that is described in IRS regulations as an unforeseeable emergency.

Guidance Request:

- ***Self-Certification.*** The SPARK Institute requests guidance on the type of written certifications that will qualify for the treatment described in Section 312 of SECURE 2.0. For example, could an employee simply certify that he or she has experienced one of the safe harbor hardship events? Or, must an employee specifically identify the safe harbor hardship event that is deemed to create an immediate and heavy financial need?

- ***Unforeseeable Emergency Withdrawals.*** The SPARK Institute requests guidance on the specific events for which the administrator of a governmental 457(b) plan may rely on a participant's self-certification pursuant to Section 312 of SECURE 2.0. We would expect, for example, that a participant in a governmental 457(b) plan could, at a minimum, certify that a distribution is needed to pay for expenses arising from: (1) an illness or accident; (2) a loss of property due to casualty; (3) an imminent foreclosure or eviction from a primary residence; (4) medical expenses; and (4) funeral expenses.[14] Clarification on this issue would be helpful because, unlike the regulatory safe harbor hardship events for 401(k) and 403(b) plans, which are always deemed to create an immediate and heavy financial need, the unforeseeable emergency withdrawal regulations are less definitive about whether certain emergencies create an in-service distribution right. For example, the 457 regulations indicate that an imminent foreclosure or eviction, medical expenses, and funeral expenses "may" (as opposed to "will") constitute an unforeseeable emergency. While self-certification for all of these events appears consistent with congressional intent, confirmation of this point would nevertheless be helpful.

U. Unenrolled Participant Disclosures (320)

SECURE 2.0: Section 320 of SECURE 2.0 generally exempts defined contribution plans from furnishing disclosures and notices that are otherwise required to be furnished to unenrolled participants, if certain conditions are satisfied. Section 320 of SECURE 2.0 applies to plan years beginning after December 31, 2022.

[14] We also encourage Treasury and IRS to expressly permit self-certification for any expenses that are eligible for an unforeseeable emergency distribution under Rev. Rul. 2010-27.

<u>Guidance Request:</u>

- ***Regulatory Coordination.*** Because the ERISA and Code relief in Section 320 of SECURE 2.0, and the conditions for such relief, involve issues that are within IRS's and DOL's jurisdiction, the SPARK Institute requests that IRS and DOL coordinate on regulatory guidance implementing this relief and that any guidance be issued jointly by both regulators.

- ***Unenrolled Participant Definition.*** The exemption described in Section 320 of SECURE 2.0 is available with respect to employees who are "eligible to participate in a defined contribution plan," but are "not participating in such plan." The SPARK Institute requests clarification on which employees are in this group. For example, if an employee who is eligible to participate previously contributed to the plan, but subsequently withdrew his or her entire account, would such employee be treated as participating in the plan? It would appear that such an individual would not currently be participating in the plan. Additionally, we request guidance indicating whether an employee is treated as participating in the plan based on an account with any employee or employer contributions. Or, alternatively, are employees only participating in a plan when they have elected to contribute to a plan?

- ***List of Notices Related to Eligibility.*** As a condition for relief under Section 320 of SECURE 2.0, an unenrolled participant must be furnished with the summary plan description and any other notices "related to eligibility under the plan" that are required to be furnished under ERISA or the Code in connection the participant's initial eligibility under the plan. The SPARK Institute requests guidance specifically identifying the list of notices that are "related to eligibility" in connection with a participant's initial eligibility under the plan.

- ***Other Criteria for Relief.*** In addition to providing certain notices to unenrolled participants when they first become eligible, the relief under Section 320 of SECURE 2.0 is also conditioned upon any unenrolled participant satisfying "such other criteria" that the Labor Secretary and Treasury Secretary may determine appropriate. The SPARK Institute requests guidance indicating that the relief under Section 320 of SECURE 2.0 is available before DOL and/or Treasury issue guidance specifying any other criteria for relief.

- ***List of Notices That Do Not Need to Be Sent.*** Assuming that an unenrolled participant is eligible for the relief under Section 320 of SECURE 2.0, the SPARK Institute requests an express listing of the ERISA and Code disclosures, notices, and other documents that do not need to be sent to an unenrolled participant.

V. STARTER 401(k) PLANS (121)

<u>SECURE 2.0:</u> Section 121 of SECURE 2.0 establishes two new types of plans for employers that do not already maintain a retirement plan: (1) a "starter 401(k) deferral-only arrangement;"

and (2) a new type of 403(b) plan called a "safe harbor deferral-only plan." These arrangements are commonly being referred to as "Starter 401(k)" and "Starter 403(b)" plans.

Guidance Request:

- ***Overlapping Eligibility and Auto-Enrollment Requirements.*** To rely on the relief provided by SECURE 2.0 for Starter 401(k) and 403(b) plans, a plan must satisfy certain eligibility and automatic enrollment requirements. Additionally, these arrangements must also comply with all other Code requirements, including SECURE 2.0's general automatic enrollment requirement (Section 101) and its special participation rules for long-term part-time employees (Section 125). Given the complexity that is created by these overlapping sets of rules, the SPARK Institute request guidance clarifying how Starter 401(k) and 403(b) plans may be designed in order to comply with all of the overlapping requirements.

W. Expanded Start-up credit (102)

SECURE 2.0: Section 102 of SECURE 2.0 includes a pair of enhancements to the existing start-up credit for small employers.

First, Section 102(a) of SECURE 2.0 makes the credit equal to 100%, instead of 50%, of certain costs paid or incurred in connection with starting a retirement plan, up to the current-law annual cap, for employers with up to 50 employees. Second, in the case of defined contribution plans, Section 102(b) provides an additional credit equal to the "applicable percentage" of the amount contributed by the eligible employer on behalf of employees who have FICA wages of $100,000 or less, up to a per-employee cap of $1,000. The applicable percentage is 100% in the first and second years, 75% in the third year, 50% in the fourth year, 25% in the fifth year, and 0% in any taxable year thereafter.

These changes apply to taxable years beginning after December 31, 2022.

Guidance Request:

- ***Plan Establishment.*** The longstanding start-up credit rules have permitted the start-up credit for the first year that a plan becomes "effective" and the two subsequent taxable years.[15] Section 102(b) of SECURE 2.0, however, creates an enhanced start-up credit that is, in part, based on "the taxable year during which the eligible employer plan is *established* with respect to the eligible employer." The SPARK Institute requests confirmation that, for this purpose, the taxable year during which a plan is "established" is the taxable year in which a plan becomes "effective." Importantly, the establishment year should not be the adoption year, so that an eligible employer will not be penalized (i.e., limited to 4 years) for adopting the plan in the taxable year immediately preceding the plan's effective date.

[15] Code section 45E(d)(3).

- ***FICA Wages.*** The SPARK Institute requests confirmation that the start-up credit limitation for employees with wages in excess of $100,000 does not apply to employer contributions made on behalf of individuals who have no FICA wages.

- ***Plans Established in Taxable Years Prior To 2023.*** Section 102(d) of SECURE 2.0 states that SECURE 2.0's start-up credit changes apply to taxable years beginning after December 31, 2022. The SPARK Institute requests confirmation that plans established before 2023 are eligible for the new start-up credit enhancements. For example, if a plan became effective in 2021, for the 2023 tax-year, the employer would be able to take a tax credit of up to 100% of qualified startup costs (provided the employer had no more than 50 employees) and would be able to take a tax credit of up to the applicable percentages of employer contributions (75% for 2023, 50% for 2024 and 25% for 2025, as limited) provided the employer is otherwise eligible.

- ***"Eligible Employer" Determination.*** For purposes of Section 102(b) of SECURE 2.0 (the employer contribution portion of the enhanced start-up credit), whether an employer is an eligible employer and the number of employees of an employer is determined using the longstanding start-up credit eligibility rules, except that the limitation for employers with a plan in the prior three years only applies to the taxable year in which the plan is established. The SPARK Institute requests clarification on whether that means that an eligible employer who had a plan in the past three years may take the credit for the subsequent four years after the year of establishment, or whether that means the tax credit is not available for any tax year if the employer is not eligible in the tax year the plan is established.

X. PUBLIC SAFETY OFFICER HEALTH PREMIUMS (328)

SECURE 2.0: Section 328 of SECURE 2.0 expands the exclusion described in Code section 402(l) to cover distributions that are made to eligible retired public safety officers to pay for qualified health insurance premiums, whether or not the payments are made directly to the health plan or the insurer. Thus, the exclusion is now available even when a distribution is made directly to an employee.

Guidance Request:

- ***Administrator and Payor Obligations.*** The SPARK Institute requests guidance addressing if and how Section 328 of SECURE 2.0 affects a plan administrator's or payor's obligations with respect to distributions that are made directly to an employee and excluded from the employee's income under Code section 402(l). For example, does this new option affect how a payor must report or withhold from a distribution that will be excluded from the employee's income under Code section 402(l). (Currently, the Form 1099-R instructions provide that distributions under Code section 402(l) are reported as taxable distributions, with no special codes.)

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Thank you for your consideration of our requests. If you have any questions or would like more information regarding our requests, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP (mlhadley@davis-harman.com).

Sincerely,

Tim Rouse
Executive Director