

**MEMO# 30463**

December 7, 2016

## **Letter to IRS Regarding Hardship Distribution Substantiation**

[30463] December 7, 2016 TO: Pension Committee  
Pension Operations Advisory Committee RE: Letter to IRS Regarding Hardship Distribution Substantiation

Attached is a letter submitted jointly by ICI, the American Benefits Council, and the SPARK Institute to the Internal Revenue Service regarding procedures for substantiating hardship distributions from defined contribution plans. The letter was submitted pursuant to the Industry Issue Resolution Program (IIRP), which is described in Revenue Procedure 2016-19.[\[1\]](#) The IRS initiated this project to discuss current practices for approving hardship distributions, with the goal of developing workable standards for hardship substantiation that the IRS would eventually describe in some form of guidance (exact form to be determined).[\[2\]](#)

The joint letter advocates for guidance permitting hardship substantiation methods without requiring participants to submit copies of actual documentation supporting the existence of a hardship, noting that such a requirement makes the hardship approval process cumbersome and slow. The letter outlines various approaches to approving hardship distributions that involve meaningful internal controls and that are designed to ensure hardship distribution requests are legitimate and meet the requirements of the Internal Revenue Code. The methods include online, paper-based, and verbal (telephone) application processes.

The IRS held, and we attended, a meeting today (December 7, 2016) to discuss the submission. Representatives from the American Benefits Council and the SPARK Institute also attended, including representatives from various plan recordkeepers who are members of all three organizations. Other industry trade groups made submissions and attended the meeting as well. IRS staff expressed appreciation for our input and indicated that they would follow up with the group in regard to the next steps in the IIRP process.

Please let me know if you have any questions regarding this matter.

Elena Barone Chism  
Associate General Counsel

[Attachment](#)

## endnotes

[1] Rev. Proc. 2016-19 is available at [https://www.irs.gov/irb/2016-13\\_IRB/ar14.html](https://www.irs.gov/irb/2016-13_IRB/ar14.html). For more information on the IIRP, see <https://www.irs.gov/businesses/fact-sheet-industry-issue-resolution-iir-program>. The program is described as a “structured dialogue” (in other words, a formal process for obtaining stakeholder input), rather than a negotiated rulemaking.

[2] As you may know, there is an item on the current IRS/Treasury guidance plan relating to substantiation of hardship distributions. Although there is no formal guidance on the documentation required for substantiation of a hardship, the IRS has indicated informally (in a 2015 newsletter, see [https://www.irs.gov/pub/irs-tege/eptn\\_2015\\_4.pdf](https://www.irs.gov/pub/irs-tege/eptn_2015_4.pdf)) that plan sponsors should keep documentation substantiating immediate and heavy financial need, and that electronic self-certification (by the participant) of the nature of a hardship is not sufficient. We have previously asked the IRS to clarify the status of this informal newsletter guidance (see <https://www.ici.org/pdf/29913.pdf>).

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