



714 HOPMEADOW STREET, SUITE 3  
SIMSBURY, CT 06070  
(860) 658-5058

ROBERT G. WUELFING, PRESIDENT  
LARRY H. GOLDBRUM, GENERAL COUNSEL

Filed Electronically

September 8, 2008

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attention: Participant Fee Disclosure Project  
Room N-5655  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Re: **Participant Fee Disclosure Project**

Ladies and Gentlemen:

The SPARK Institute, Inc.<sup>1</sup> appreciates this opportunity to comment on the proposed regulation regarding “Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans” (the “Proposed Regulation”)<sup>2</sup> issued by the Employee Benefits Security Administration (“EBSA”) on July 23, 2008. The SPARK Institute members include the retirement plan service providers, including record keepers and investment fund managers, who will be directly affected by any new fee disclosure rules. Many of our members are the service providers that will be called upon by plan sponsors to help facilitate compliance with the new participant disclosure regulations.

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<sup>1</sup> The SPARK Institute represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, insurance companies, third party administrators and benefits consultants. Our members include most of the largest service providers in the retirement plan industry and the combined membership services. Collectively, our members serve over 95% of the nation’s 401(k) participants and more than 90% of all 403(b) plan participants.

<sup>2</sup> 73 Fed. Reg. 43014 (July 23, 2008).

At the outset, The SPARK Institute reiterates its support for more robust fee disclosure in the retirement plan industry. Additionally, we commend EBSA for taking a measured and flexible approach in establishing new plan sponsor to participant fee disclosure requirements. The SPARK Institute commends EBSA for soliciting and considering the regulated industry's issues, concerns and expertise through the Request For Information ("RFI")<sup>3</sup> process prior to developing the Proposed Regulation. Some of the specific provisions that The SPARK Institute supports include, but are not limited to: (1) the flexible concept based approach that allows plan fiduciaries, service providers and investment providers flexibility in making participant disclosures, (2) the absence of a mandated one-size fits all disclosure form or format, (3) the targeted approach that focuses on providing clear, concise and meaningful disclosure, including investment option comparisons, without mandating disclosures of potentially confusing, excessive and costly details, (4) allowing plan fiduciaries to rely on the most currently available fund information instead of mandating costly new updates, (5) permitting disclosure through cost effective electronic media, and (6) excluding brokerage windows from disclosure requirements.

The remainder of this comment letter summarizes The SPARK Institute's issues and concerns regarding the Proposed Regulation. We respectfully request that EBSA consider our views and recommendations regarding our issues and concerns.

**A. The Regulation Should Expressly Provide that the Supplemental Investment Information Required Under Section 404a-5(d)(i)(B) of the Proposed Regulation Can Be Provided Directly or Indirectly Through a Single Plan Website** - Section 404a-5(d)(i)(B) of the Proposed Regulation requires the plan fiduciary (or a person or persons designated by the fiduciary to act on its behalf ("designee")) to provide each participant or beneficiary (hereinafter collectively referred to as "participant") with respect to each "designated investment alternative," an Internet website address that is:

"...sufficiently specific to lead participants and beneficiaries to supplemental information regarding the designated investment alternative, including the name of the investment issuer or provider, the investment's principal strategies and attendant risks, the assets comprising the investment's portfolio, the investment portfolio's turnover, the investment's performance and related fees and expenses...."

As EBSA knows, most retirement plan service providers offer plans, a participant website that allows participants to access information about the plan, their individual account and the investment options. The plan website that is made available to participants through the plan's record keeper can serve as a single direct and indirect source for the most current supplemental investment information that is available to the plan fiduciary. The SPARK Institute recognizes that the Proposed Regulation, as currently drafted, may already permit the plan fiduciary to provide the supplemental information directly or indirectly by providing

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<sup>3</sup> 72 Fed. Reg. 20457 (April 25, 2007). The SPARK Institute submitted a response to the RFI on July 23, 2007.

participants with a single plan website address. However, we are concerned that absent additional clarification, the requirement may be subject to different interpretations and either adversely impact compliance, or result in unnecessary additional compliance costs.

**Recommended Approach** - The SPARK Institute requests that EBSA clarify that the plan fiduciary or its designee may provide the supplemental investment information required under Section 404a-5(d)(i)(B) of the Proposed Regulation directly or indirectly by providing participants with a single plan website address, provided that the plan website either includes the required information or provides the links necessary to lead participants to the supplemental information (e.g., to the investment manager’s or investment company’s fund specific web page(s)).

**B. The Supplemental Investment Information Requirement Section 404a-5(d)(i)(B) of the Proposed Regulation Should Provide Additional Flexibility for Compliance in Certain Circumstances**

- The SPARK Institute commends EBSA for allowing compliance with the supplemental disclosure requirements through the Internet. However, we are concerned that under certain circumstances, and with respect to certain investment options, some of the information may not be available through the Internet. Additionally, we are concerned that certain information listed under Section 404a-5(d)(i)(B) either may not exist at all for certain investment options or should not be included among the lists of required information. It is unclear whether the items noted under Section 404a-5(d)(i)(B) are examples of supplemental information that may be available or are items that must be available for all designated investment options. The model disclosure form that was released with the Proposed Regulation indicates that the websites are provided for participants to access additional information. However, the model disclosure form uses the phrase “such as” which could suggest that not all of the information is necessarily available for each investment option. For example, information on an investment’s “principal strategies and attendant risks” may not be available for individual securities or other types of investments. Plan fiduciaries can only disclose or provide access to disclosure of information that is made publicly available by a fund issuer or provider.<sup>4</sup>

**Recommended Approach** - The SPARK Institute requests that EBSA modify the Proposed Regulation to permit the plan fiduciary or its designee to either provide participants with a plan contact name and telephone number in order to enable participants to obtain the supplemental information, or provide the supplemental information in writing when such information is not otherwise available through a website. Additionally, The SPARK Institute requests that EBSA modify Section 404a-5(d)(i)(B) to clarify which supplemental information is required to be available and which supplemental information is optional for some investment options.

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<sup>4</sup> The SPARK Institute recommends that EBSA inform plan fiduciaries that as part of the plan fiduciaries’ duties to make prudent decisions with respect to the selection of the investment funds to be included under their plans, the plan fiduciaries should consider whether sufficient supplemental investment information is available from the investment manager or fund provider.

The SPARK Institute believes that the current 404(c) regulations provide useful insight for making distinctions between required and optional supplemental information. Section 404c-1(b)(2)(i) requires an investment description for each option which includes “investment objectives and risk and return characteristics.” This information, along with investment strategy (which is often a component of the objective), is reasonable for a participant to be able to obtain in order to evaluate and compare investment options under the plan. However, the additional items noted in the Proposed Regulation that are not always available for all types of investment options (e.g., assets comprising the investment portfolio and the investment’s portfolio turnover rate) are not likely to be beneficial to the vast majority of participants. While mutual funds are required to provide such disclosures, non-registered investment products are not subject to such requirements and the cost and efforts to gather, present and provide that information will likely be substantial. Given the potentially marginal usefulness of such information for most participants, we believe that the costs associated with making such supplemental information mandatory when it is not otherwise available will outweigh the potential benefits.<sup>5</sup>

The last two items identified under Section 404a-5(d)(i)(B) are the investment’s performance and related fees and expenses. As those items are required to be listed on the initial annual notice, it seems duplicative to require the same items as supplemental information if they are not updated more frequently than annually. For mutual funds, performance is updated quarterly and that information would be available via the fund’s website. But, as noted above, not all investments have an Internet website. The supplemental information to be available regarding fees and performance should be limited to what the fund otherwise provides and makes readily available.

Section 404a-5(d)(i)(B) should be further modified to provide that when any of the supplemental information that is deemed to be required under this provision is not available, then the plan fiduciary and its designee shall not fail to satisfy this requirement, provided however, that the plan fiduciary or its designee provide comparable information that is made available by the investment fund manager or issuer.

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<sup>5</sup> EBSA requested comments addressing the application of the Proposed Regulations to funds and investment products that are not subject to the securities laws. The SPARK Institute supports “comparable” transparency among all investment options, regardless of whether they are subject to securities laws, so that participants have useful information to compare their investment options. However, because of the variety of investment options available and differences among them, not all of the same information is applicable, available, useful or cost effective to gather and provide. Therefore, although The SPARK Institute supports “universal” applicability, the regulations must provide flexibility to allow for the use of comparable information when the information that may otherwise be required does not apply or is not otherwise readily available. Additionally, consistent with our recommendation in footnote 4, The SPARK Institute suggests that EBSA inform plan fiduciaries that as part of their duties to make prudent investment fund selection decisions, the plan fiduciaries should consider whether adequate information for participants to use to make comparisons among the funds is available from the investment manager or fund provider.

**C. The Benchmark Information Requirements in Section 404a-5(d)(1)(iii) of the Proposed Regulation Should Provide Additional Flexibility for Compliance in Certain Circumstances** - Section 404a-5(d)(1)(iii) of the Proposed Regulation requires, with respect

to non-fixed return funds, that the plan fiduciary or its designee provide the name and returns of an appropriate broad-based securities market index for specified time periods. The Proposed Regulation also requires that the benchmark that is provided is not administered by an affiliate of the investment provider, and certain others, unless the index is widely recognized. The SPARK Institute recognizes the value in providing benchmark information for participants. However, many plans offer plan specific asset allocation funds or portfolios to plan participants as investment options. Such plan specific portfolio funds are typically not mutual funds, but they may use mutual funds as their underlying investments. Additionally, a significant number of plans use target date, lifestyle or lifecycle funds. We are concerned that suitable benchmarks may not always be available for such investment options. For example, providing a pure equity fund benchmark, such as the S&P 500, for any of the funds noted above would not provide an apples-to-apples comparison because the funds will likely have a fixed income component that is not accounted for in the benchmark.

Additionally, we are concerned that under certain circumstances related to the long term historical performance of target date funds the benchmark comparisons can be flawed. For example, while a 2010 target date fund's short term performance (i.e., one year) may be benchmarked against a combined index made up of 20 percent S&P 500 and 80 percent Lehman Brothers Bond Index in order to be comparable to the fund's current equity and bond allocation percentages, using that same benchmark to evaluate the fund's long term performance could be misleading. The target date fund's equity and bond allocation percentages ten years earlier would most likely have been weighted more heavily towards equity than bonds. Consequently, in the example above, using the same 20/80 combined index for benchmarking the ten year period performance will not provide an apples-to-apples comparison.

Additionally, we are concerned that the benchmark information requirement as written and without further clarification could provide a basis for frivolous lawsuits in the future. For example, a potential lawsuit could claim that the plan fiduciary acted imprudently by not removing or replacing an investment option that trailed its benchmark over the long term. However, based on the information provided above, absent certain modification and flexibility in the final regulations, it is easy to anticipate this type of situation, even though the plan fiduciary acted in good faith and attempted to comply with the Proposed Regulations.

**Recommended Approach** - The SPARK Institute requests that EBSA modify the Proposed Regulation to provide that the plan fiduciary may rely on the benchmark information provided by the investment fund or investment manager and that such benchmark may include a weighted combination of more than one recognized index. Additionally, in the case of a plan specific account or other investment option, where a fund manager does not provide a benchmark, the plan fiduciary should be permitted to use a weighted combination of more than one recognized index. More importantly, we urge EBSA to expressly recognize that the development and selection of suitable benchmarks is an art, not a science, and that reasonable

investment professionals can and often do have different views regarding which benchmarks are the most suitable for a fund. We also request that EBSA provide that a plan fiduciary and plan service provider (e.g., record keeper) shall not be liable for providing any benchmark information to participants (1) when such information is provided by an unaffiliated investment fund manager or issuer or (2) when the plan fiduciary develops and provides a combined benchmark for a plan specific fund, provided that the plan sponsor was prudent in developing the benchmark.

**D. The Proposed Regulation Should Be Modified to Expressly Provide that the Plan Fiduciary and its Designee Shall Not Be Liable for Their Reasonable and Good Faith Reliance on Information Furnished by Third Party Investment Providers** - The SPARK Institute recognizes and commends EBSA for providing that “fiduciaries shall not be liable for their reasonable and good faith reliance on information furnished by their service providers with respect to those disclosures required by paragraph (d)(1)” of the Proposed Regulation.<sup>6</sup> However, the vast majority of plan fiduciaries will likely engage service providers to help them satisfy their fiduciary obligations under the Proposed Regulation. Except when dealing with proprietary investments of the service provider (e.g., plan record keeper), the service provider must obtain the information for the plan fiduciary from unaffiliated third parties. Generally, the plan fiduciary, not the plan service provider, is responsible for selecting the plan’s investment options. Accordingly, The SPARK Institute believes that plan service providers should also be protected when providing and relying on investment information furnished by unaffiliated third parties, that is in turn provided to plan fiduciaries and others.

**Recommended Approach** - The SPARK Institute Requests that EBSA modify the Proposed Regulation to provide that a plan service provider (e.g., record keeper) shall not be liable for providing any investment fund information to a plan representative, plan fiduciary, plan participant or beneficiaries, when such service provider is furnished such information, and in turn provides the information to a plan representative, plan fiduciary, plan participant or beneficiary, with reasonable and good faith reliance on the accuracy and completeness of such information provided to it by an unaffiliated investment manager or issuer.

**E. The Proposed Regulations Should Be Modified to Allow Plan Fiduciaries to Disclose All Asset-Based Fees and Expenses by Disclosing the Rate Instead of Requiring Quarterly Dollar Amount Disclosures** - It is not uncommon in certain circumstances for a plan service provider, at the direction of the plan fiduciary, to add an asset-based fee at the plan or fund level in order to cover administrative and record keeping charges. These charges are commonly referred to as wrap charges. Although such charges are not investment related, through the accrual process they effectively become embedded within the plan or the investment funds. Consequently, a plan fiduciary and its service provider (e.g., record keeper) will face difficult and expensive challenges if they are required to disclose the dollar amount of such fees on an individual participant basis, either quarterly or annually. It

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<sup>6</sup> See 73 Fed. Reg. 43014, n.7 (preamble to the Proposed Regulation) (July 23, 2008).

appears that EBSA recognized these same challenges in the context of disclosing investment related asset-based fees and did not require participant by participant disclosure of asset-based investment fees under Sections 404a-5(d)(1)(iv)(A) and (B) of the Proposed Regulation. The SPARK Institute is concerned that Section 404a-5(c)(2)(ii) of the Proposed Regulation will require plan fiduciaries to disclose asset-based administrative fees in dollar amounts on an individual participant basis. As EBSA knows from other comment letters submitted by The SPARK Institute and other groups, service providers' systems are not currently able to make such disclosures and the time, cost and effort to modify the necessary systems would be significant and require additional compliance time.<sup>7</sup>

**Recommended Approach** - The SPARK Institute requests that EBSA modify Section 404a-5(c)(2)(ii) of the Proposed Regulation to permit the plan fiduciary or its designee to disclose the rate or amount of asset-based administrative fees instead of the actual dollar amounts to each participant. This will allow more cost effective disclosure and compliance without a compromise in the usefulness of the same type of information relative to investment related fees.

- F. The Requirement to Disclose Any Restrictions on Transfers To and From a Designated Investment Alternative under Section 404a-5(c)(1)(i)(B) Should Be Clarified** - Section 404a-5(c)(1)(i)(B) of the Proposed Regulation requires that the plan fiduciary provide “an explanation of any specified limitations on such instructions under the terms of the plan, including any restrictions on transfers to or from a designated investment alternative.” [Emphasis added.] Based on our reading of this provision, it appears that the plan fiduciary would only be required to disclose plan imposed restrictions.

**Recommended Approach** - The SPARK Institute requests that EBSA expressly state that the requirement under Section 404a-5(c)(1)(i)(B) of the Proposed Regulation only applies to plan imposed transfer restrictions, and not fund specific restrictions that emanate from the investment funds (e.g., redemption fee, round trip limitation, or 30 day equity wash requirement). We note that it is not our intent to suggest that information about restrictions that originate from the investment funds not be disclosed to participants. Instead, we request that EBSA clarify that disclosure regarding restrictions that emanate from an investment fund should be disclosed in the fund’s materials.

- G. The Reference to Designated “Investment Manager” Under Section 404a-5(c)(1)(i)(E) Should be Clarified** - Section 404a-5(c)(1)(i)(E) of the Proposed Regulation requires that the plan fiduciary include in certain disclosures “an identification of any designated investment managers under the plan.” However, neither of the terms “investment managers” nor “designated investment managers” is defined in the Proposed Regulation. The SPARK Institute believes that adding a definition of Investment Manager to the regulations will eliminate different interpretations and facilitate better compliance.

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<sup>7</sup> See The SPARK Institute letter, dated July 23, 2007, in response to EBSA’s RFI, pages 5 and 14 -15.

**Recommended Approach** - The SPARK Institute requests that EBSA define the term “designated investment manager” for purposes of the participant disclosure regulations as any person or entity that is responsible for managing “plan assets,” as such term has been defined by EBSA, regardless of whether such person or entity is an “investment manager” as defined under Section 3(38) of the Employee Retirement Income Security Act of 1974 (“ERISA”), but does not include the manager of a mutual fund registered under the Investment Company Act of 1940.

**H. The Triggering Event for the Initial Participant Disclosures Should be the First Plan Entry Date After the Participant Satisfies the Plan’s Eligibility Requirements** - Sections 404a-5(c) and (d) of the Proposed Regulation require that certain disclosures are provided to each participant “on or before the date of plan eligibility.” The SPARK Institute agrees that the plan fiduciary should, when possible, provide such disclosures to participants in advance so the participants are able to evaluate the information. As EBSA knows, the date on which a participant becomes eligible to participate in a plan and their plan entry date can differ by as much as approximately five months, in the case of a plan with semi-annual entry dates. In situations where a participant’s eligibility date and plan entry date could potentially be more than 30 days apart, providing the disclosures on or before the eligibility date could be ineffective. Participants are more likely to ignore such notices if they receive them too far in advance of when they are able to enter the plan and have to make their investment decisions. Additionally, information provided as much as five months in advance of a participant’s plan entry date could be outdated by the time of their plan entry date.

The SPARK Institute is also concerned about the use of eligibility rather than entry date as the triggering event for the 30 days advance disclosure because plan service providers, who will most likely be asked to fulfill the notice obligations of the plan fiduciary, will not know when a participant becomes eligible to participate. Additionally, it is more efficient to provide simultaneous notice to all participants that are eligible to enter the plan on the same date instead of providing notice on an ad-hoc basis to one employee at a time, as each satisfies the plan’s age and service conditions. The SPARK Institute believes that requiring plan sponsors and their service providers to change their existing processes for this purpose would add extra compliance costs for very little potential value.

Finally, if plan fiduciaries prefer to combine the Section 404a-5(c) and (d) notices with the QDIA notice, the timing for delivery of these notices should be synchronized. This would facilitate a more coordinated and cost effective notice and compliance regime.

**Recommended Approach** - The SPARK Institute requests that EBSA modify Sections 404a-5(c) and (d) of the Proposed Regulation to require the plan fiduciary to provide the initial disclosures to participants at least 30 days before the participant’s first plan entry date. This will result in participants receiving the initial disclosure information at a time which is most relevant to their investment decision making, and in a manner that is more cost effective. In the case of immediate entry plans (i.e., plans that either automatically enroll or allow employees to enroll in the plan immediately), the plan fiduciary should be required to provide the initial disclosures on the participant’s plan entry date or within a reasonable time after such entry date.



**I. The Triggering Event for Participant Notice Regarding the Adoption of any Material Change in Plan Related Information Under Section 404a-5(c)(1)(ii) of the Proposed Regulation Should Be 30 Days Before the Effective Date of Such Change** - Section 404a-5(c)(1)(ii) of the Proposed Regulation requires the plan fiduciary or its designee to provide participants with notification of any material change to the information required under Section 404a-5(c)(1)(i) no later than 30 days after the adoption of such material change. The SPARK Institute recognizes the importance of providing participants advance notice regarding such changes to give them sufficient time to evaluate the implications of such changes. The SPARK Institute is concerned, however, that using the “adoption date” as the triggering event for such notice could be subject to different interpretations. For example, in many instances the approval process with respect to changes could require approval by one or more plan committees, company executives and the board of directors. The SPARK Institute is concerned that relying on the adoption date as the triggering event will be imprecise and could have an adverse impact on compliance.

Additionally, we are concerned that by referencing the “adoption date” as the triggering event, participants could potentially receive the notice too far in advance of the effective date causing it to be ineffective. As noted above, The SPARK Institute believes that participants are more likely to ignore notices that are provided too far in advance of when they need the information in order to make decisions.

**Recommended Approach** - The SPARK Institute requests that EBSA modify Section 404a-5(c)(1)(ii) of the Proposed Regulation to require the plan fiduciary to provide the required notice to participants at least 30 days in advance of the effective date of such change, provided that it is administratively feasible to do so. Additionally, we request that the regulation provides that the plan fiduciary shall not fail to satisfy this requirement if it provides less than 30 days advance notice when it is either administratively impractical to do so, or when a change that is in the best interests of plan participants and beneficiaries is effective less than 30 days after it is adopted. This will result in participants receiving the necessary notice and information when it is timelier for their decision making, without causing compliance failure by well meaning plan fiduciaries. The SPARK Institute believes that relying on the effective date as the triggering event is more precise and will facilitate better compliance by plan fiduciaries.

**J. The Timing and Manner of Delivery of Requirements that Apply to Certain Disclosures that Can Be Included in Participant Pension Benefit Statements Should Be Conformed to the Requirements that Apply to Pension Benefit Statements** - Section 404a-(5)(e)(2) of the Proposed Regulation provides that certain information that must be provided to Participants “at least quarterly” may be included as part of the participant benefit statements furnished, pursuant to ERISA Section 105(a)(1)(A)(i). Section 404a-(5)(g)(5) of the Proposed Regulation defines “at least quarterly” as at least once in any 3-month period. However, rules that apply to delivery of participant pension benefit statements provide that participant statements are considered to satisfy the quarterly statement requirement if they are delivered within a specified number of days after the end of a reporting quarter. The SPARK Institute is concerned that the differences in the timing rules in the Proposed Regulation and those that apply to delivery of pension benefit statements may prevent plan

fiduciaries from furnishing the disclosures required under the Proposed Regulations through participant statements, or cause inadvertent violations of the Proposed Regulation.

Our concern about the potential for inadvertent violations of the Proposed Regulations is illustrated in the following example. Assume that a plan sponsor provides its plan participants with their account statements for the first calendar quarter on the 21<sup>st</sup> day following the end of the quarter. At the end of the second calendar quarter, the plan sponsor provides participants with their statements on the 30<sup>th</sup> day following the end of the quarter. Under these facts the plan sponsor would have satisfied the participant statement delivery requirements. However, because the first quarter and second quarter statements were provided to participants more than 90 days apart, we are concerned that a plan fiduciary that includes the participant fee disclosure information in such statements may have technically and inadvertently violated the disclosure requirements under the Proposed Regulations.

**Recommended Approach** - The SPARK Institute requests that EBSA modify Sections 404a-5(e)(2) and 404a-5(g)(5) of the Proposed Regulation to provide that a plan fiduciary will be considered to have satisfied the timing requirements under the Proposed Regulations if the information that must be provided quarterly is furnished through the participant statements in compliance with ERISA Section 105(a)(1)(A)(i). Additionally, we urge EBSA to also extend the no “push out” provisions of the participant statement delivery rules to the information that must be provided quarterly under the Proposed Regulation.

**K. The Proposed Regulation Requirement Regarding Furnishing Disclosure Through Electronic Media Should Be Modified to Provide the Same Flexibility Provided in Connection with Qualified Default Investment Alternatives Under Section 404c-5, Absent Further Guidance from EBSA** - Section 404a-5(g) of the Proposed Regulation provides that disclosures shall be furnished in compliance with the requirements relating to the use of electronic media under EBSA regulations Section 2520.104b-1. The SPARK Institute recognizes that EBSA is working on a separate initiative concerning broader application of disclosure through electronic media. However, in the interim we are concerned that limiting the manner of compliance under the Proposed Regulation will be inefficient and more costly. We are also concerned that these potentially short term interim rules that differ from those adopted in Field Assistance Bulletin 2006-03 (relating to the delivery of participant benefit statements) will create additional costs in order to comply with rules that are expected to change.

**Recommended Approach** - Given the widespread availability of the Internet to participants, as well as it being the preferred approach for many to receive plan information, The SPARK Institute recommends that EBSA permit the required disclosures to be made in a similar fashion, as adopted in Field Assistance Bulletin 2006-03 related to the delivery of participant benefit statements. Plan fiduciaries should be permitted to send a notice (electronically or otherwise) to all participants notifying them that the initial and annual disclosures are continuously available via the Internet. If the participant wishes to receive a paper copy, they can request one. This method would allow considerable cost savings to plan fiduciaries and ultimately to plan participants. Further, it has the benefit of allowing participants to access the information when they are ready to focus on their plan investments versus sending them

considerable paper, which historically is simply discarded by the vast majority of participants. At a minimum, The SPARK Institute requests that EBSA modify the Proposed Regulation to allow plan fiduciaries to rely on either the guidance issued by EBSA under Section 104b-1(c), or the guidance issued by the Department of Treasury and Internal Revenue Service at 26 CFR § 1.401(a)-21 relating to use of “electronic media” to send the notices or the proposed notice of availability.

- L. The Effective Date of the Proposed Regulations Should be Extended in Order to Allow Plan Fiduciaries, Plan Service Providers and Investment Providers Adequate Time to Comply** - As noted at the outset of this comment letter, The SPARK Institute is pleased with the approach taken by EBSA in the Proposed Regulations. Nevertheless, the service, system, process and procedure changes that are required to comply with the Proposed Regulations will take significantly longer than allowed for in the proposal. For example, service providers must modify their systems to specifically capture and report administrative expenses on a quarterly basis on participant statements. Additionally, some of the information is not currently available from all types of investment funds and plan fiduciaries and service providers will be dependant on the investment provider’s ability to create and provide the information by the compliance deadline.

Additionally, The SPARK Institute urges EBSA to take into account the many other changes and resource demands being imposed on plan sponsors and service providers that are attempting to comply with the many other EBSA (e.g., the impending new 408(b)(2) regulations, and Form 5500 changes), IRS (e.g., the new 403(b) plan regulations) and SEC initiatives (e.g., anticipated new 12b-1 fee rules) affecting the retirement plan industry. The resource demands with respect to matters such as these generally fall on many of the same people within each organization, which makes it necessary for more time to comply. Additionally, to the extent that complying with the new rules must be expedited in order to meet a short compliance deadline, the costs of compliance increase significantly because of the need to rely on outside and generally more expensive resources (e.g., contract workers, outside legal counsel, and additional staff).

**Recommended Approach** - The SPARK Institute requests that the effective date for the final regulations be modified to the later of the first plan year beginning on or after January 1, 2010, or one year after final regulations are published.

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The SPARK Institute appreciates the opportunity to provide these comments to EBSA. If you have any questions or need additional information regarding this submission, please feel free to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum  
General Counsel