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Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA), Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Default Investment Regulation - RIN 1210-AB10

The SPARK Institute, Inc. appreciates this opportunity to comment regarding the proposed Qualified Default Investment Alternatives (“QDIA”) regulations that were recently released by the Department of Labor (“DOL”). At the outset, we would like to commend the DOL for acting swiftly on these issues. The SPARK Institute generally supports the proposed regulations and the overall approach taken by the DOL. However, we have several concerns regarding the proposed regulations that are summarized below.

I. Participant Notice

A. Immediate Enrollment

The proposed regulation establishes six conditions for relief, including a participant notice requirement. Generally, this requirement provides that the participant must be provided notice within a reasonable period of time of at least 30 days in advance of the first investment, and within a reasonable period of time of at least 30 days in advance of each subsequent plan year. The notice can be furnished in the plan's summary plan description, summary of material modifications, or as a separate notification.

The SPARK Institute believes that the notice requirement should be modified to accommodate plans that currently allow for immediate employee enrollment. We are concerned that the QDIA relief will not be available to plan sponsors with respect to employees who enroll in a plan upon employment. For example, plan sponsors will not be able to provide the required notice in advance of the first payroll for a participant who elects to make deferrals but fails to make an affirmative investment election. Accordingly, The SPARK Institute requests that the DOL clarify that with respect to plans that allow immediate enrollment upon employment, the notice requirement shall be satisfied when the notice is provided with the enrollment materials.

B. Rollovers

The SPARK Institute believes that the proposed regulation should be modified so that the QDIA will apply in situations where an employee directs another institution (e.g., prior employer) to transfer balances from one plan into another plan as a rollover. It is not uncommon for a plan to receive rollovers without correct investment instructions. Under such circumstances, the plan may either invest those funds in the plan's default investment alternative or reject such funds pending receipt of investment instructions that are in good order. However, The SPARK Institute is concerned that in these situations it may not be feasible for a plan sponsor to provide notice to the participant at least 30 days in advance of the first investment. In fact the plan sponsor may not know to expect such funds before they are received. Thus, the QDIA relief may not be available to plan sponsors in these situations. Accordingly, The SPARK Institute requests that the DOL clarify that with respect to participant rollovers that the notice requirement shall be satisfied when the notice is provided to an employee together with the rollover forms used by the receiving plan.

C. Transitional Rules

The SPARK Institute requests that the DOL provide guidance in connection with the applicability of the QDIA regulations to participant assets held in a default investment alternative used by a plan prior to the effective date of the QDIA regulations. The SPARK Institute believes that the QDIA relief should apply to assets held in a default investment alternative prior to the effective date of the regulations provided that such fund otherwise meets the QDIA requirements, as modified with respect to participant notices. Many existing default investment alternatives could satisfy the QDIA requirements except for the notice requirement in connection with funds already held in such funds. Accordingly, The SPARK Institute requests that the DOL clarify that the QDIA relief will apply to assets held in a default investment alternative prior to the effective date of the QDIA regulations provided that (1) the plan sponsor sends proper notice to participants whose assets are held in the existing default investment fund within 90 days of the effective date of the final regulation, and (2) the default investment alternative otherwise meets the requirements of the QDIA. Any participant funds

that were defaulted into the default investment alternative prior to the effective date of the QDIA regulations and that remain there after such notice is provided should be covered by the QDIA regulations.

II. Fund Materials

The proposed regulation establishes another condition for relief if the participant is provided with certain materials with respect to the default investment alternative. Generally, the proposed regulation provides that the participant must be provided with any material provided to the plan relating to a participant's or beneficiary's investment in a qualified default investment alternative (e.g., account statements, prospectuses, proxy voting material). The SPARK Institute is concerned that the language "any material provided to the plan" could require plan sponsors to provide affected participants with fund prospectuses and amendments regularly even if not requested, fund annual reports, and other materials that are currently either only provided to plan sponsors or made available to participants upon request. The proposed regulation will require the plan sponsor to send passive participants more information than the plan sponsor would otherwise provide to participants who actively manage their assets. Additionally, the regulation would require affected participants to receive proxies even if the voting rights are not passed through to the participant, which is generally the case. Such requirement will make the QDIA unworkable and add needless administrative expenses. Accordingly, The SPARK Institute requests that the DOL modify this requirement to specify that participants whose assets are invested in a QDIA need not be provided with any information that is not otherwise provided or otherwise made available to participants who make affirmative investment elections.

III. Transfer Out Without Penalty

The proposed regulations require that participants have the opportunity, consistent with the terms of the plan to transfer, in whole or in part, the assets to any other investment alternative available under the plan without financial penalty. The participant must have this opportunity at least once in any three month period. The SPARK Institute believes that this requirement should be clarified or modified to address situations where the QDIA may impose a redemption fee on shares that are redeemed after a short holding period. We recognize that plan sponsors should consider avoiding designating as its QDIA one or more funds that impose redemption fees. However, there may be situations where either the plan sponsor elects to use such a fund or that an investment management service includes such a fund in an overall investment strategy (e.g., an international fund in a fund of funds). The DOL should clarify whether redemption fees that are imposed on all investors in a fund would constitute a penalty.

Thank you for your consideration of our views. Please do not hesitate to contact us if you have any questions or if you would like additional information regarding our comments. We can be reached at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing
President

/s/

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cc: Robert Doyle (Director of Regulations & Interpretations, EBSA)
Lou Campagna (Division of Fiduciary Interpretations & Regulations, EBSA)