THE SPARK Institute, Inc.

Testimony of

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Before the

United States Department of Labor
Employee Benefits Security Administration

And

The United States Department of the Treasury

Regarding

Lifetime Income Solutions for Retirement Plans

September 15, 2010

The SPARK Institute is an industry association that represents the interests of a broad-based cross section of retirement plan service providers, including 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 our combined membership services more than 62 million defined contribution plan participants. It is an honor for us to share our organization's views regarding lifetime income solutions for American workers who are trying to save for retirement and make their savings last for the rest of their lives when they retire.

I. INTRODUCTION

In order to encourage plan sponsors to voluntarily offer lifetime income solutions and to encourage participants to voluntarily use them, it is absolutely critical to create an environment that supports this behavior. Although lifetime income solutions are well-established in the retail market, the institutional market is still relatively new. It is a market that aims to fulfill a critical gap for millions of working Americans who do not have access to a defined benefit plan: the need for a retirement income solution.

There are several outstanding issues that will need to be addressed as this market matures. However, all of these are dependent on the level of comfort plan sponsors and participants feel about offering and using lifetime income solutions. Until this general level of comfort increases, many of the other issues – such as alternative designs and disclosure – are likely to be inconsequential

Some may question why the industry can't resolve the issues raised in the lifetime income RFI on its own. The answer is simply that some of the major challenges that plan sponsors are facing involve the application of ERISA rules. As such, we believe that the Department of Labor and Department of Treasury (the "Agencies") can and will play an important role in making retirement income solutions more readily available and understandable to plan sponsors and participants.

II. PLAN SPONSOR FIDUCIARY SAFE HARBOR

The SPARK Institute believes that the keys to greater adoption and utilization of lifetime income solutions are simplification and certainty. Until plan sponsors have a simple and reliable safe harbor that allows them to offer lifetime income solutions in their plans without materially increasing their potential for fiduciary liability and litigation, many may conclude that the potential benefits for them as an employer and business owner are outweighed by the potential risks.

Plan sponsors are concerned about their fiduciary risk and potential liability. Not only are they faced with the prospect of ensuring due diligence in connection with the initial selection of a vendor, they are faced with administrative challenges if they later decide that an active vendor is no longer a prudent selection. In such a situation, the costs incurred by the participant (e.g., benefit guarantee costs) could be lost or forfeited before they receive the benefit that they had paid for because switching providers does not constitute a distributable event. Participants would not have the option to retain the guarantee by rolling their investments into another account with the affected insurer. This puts the sponsor in an impossible position and potentially exposes them to litigation, and is a good example of an area where the Agencies can make a real impact.

Further, the requirements under the current DOL annuity provider safe harbor are considered to be so difficult to satisfy that offering a lifetime income product can be viewed as doing more harm than good. Many plan sponsors are discouraged from offering certain lifetime income products because they cannot reasonably and reliably meet the safe harbor requirements. Consequently, products that are otherwise available are not being offered to participants in their retirement plans.

The safe harbor currently requires the fiduciary to conclude "at the time of the selection" that the product provider is financially able to make all future payments under the contract. The safe harbor permits fiduciaries to make this determination either at the time the provider is selected for distribution of benefits to a specific participant or, alternatively, when the provider is selected to provide contracts at future dates, provided that the fiduciary periodically reviews the continuing appropriateness of the conclusion.

In order to improve the usefulness of the safe harbor, we recommend that the DOL:

1. Confirm that when a fiduciary initially selects a provider to deliver lifetime income contracts at future dates, and when a fiduciary later reviews the continuing appropriateness of that decision, the fiduciary's actions will be judged based on the circumstances prevailing both at the time of the initial selection and upon the subsequent review.

2. Issue guidance that expressly authorizes a fiduciary to rely on public information available at the time of review, unless the fiduciary has non-public information indicating that the provider's public information includes material misrepresentations.

3. Clarify that a plan sponsor can make a decision to no longer offer a previously offered lifetime income solution for future contribution. This could be addressed by clarifying that as long as the decision to select a lifetime income investment product was prudent at the time it was made, plan fiduciaries and plan sponsors cannot be held liable by plan participants for discontinuing the option as a current option, provided that participants are allowed to continue to keep previously invested amounts in the discontinued investment option.

III. PARTICIPANT EDUCATION

Like other financial choices, making decisions about using a retirement income product or service can be intimidating and challenging for many plan participants. Plan sponsors, with the knowledge and assistance of their service providers, are more likely to help participants understand their choices and guide them in making their own decisions if they have reasonable certainty that by doing so they will not become an investment fiduciary to the participant. Without clear and permissive guidance, plan sponsors, product providers and service providers will most likely be unwilling to provide participants with useful information, especially if doing so could cause any of them to assume additional fiduciary responsibility.

The SPARK Institute requests that the DOL issue guidance that is comparable to Interpretive Bulletin 96-1 to explicitly cover educational materials related to lifetime income options, and to expressly clarify that providing information about lifetime income options, available both inside and outside of the plan, life expectancies, historic investment returns, the impact of various withdrawal rates, longevity risk, market sequence risk, and other similar information is "education" and not advice.

Additionally, we request that the DOL clarify that plan assets can be used to pay for providing information to help participants make decisions about in-plan and out-of-plan options available to them upon separation from service or a change in provider by the plan sponsor. While it is generally understood that plan assets can be used for education regarding in-plan options, there is considerable uncertainty with respect to out-of-plan options. In order for plan participants to fully understand their options and what may be most appropriate for them, plan sponsors should be permitted to educate them about both options and to use plan assets to pay for the education costs.

IV. DATA SHARING STANDARDS INITIATIVE

We would like to mention that The SPARK Institute is on target to complete an information sharing standards project by the end of this month. We started this project almost one year ago, and it now includes over 80 individuals from more than 35 companies.

The standards that we will release will make it more feasible and cost-effective for record keepers and insurance carriers to make retirement income solutions available to plan participants, and will resolve several issues that have been impediments for record keepers, plan sponsors and participants. The standards will allow customer-facing record keepers to offer one or more products from unaffiliated insurance carriers; will facilitate portability of products when a plan sponsor changes plan record keepers (record keeper portability); and will support portability of guaranteed income when a participant has a distributable event in the form of a rollover to a Rollover IRA or as a qualified plan-distributed annuity (participant portability).

V. PRODUCT AND INDUSTRY INNOVATION

As this testimony indicates, the retirement income market is still in its early stages. We're seeing a great deal of interest from plan sponsors and plan participants, and the industry is responding with a variety of product structures and services.

As a whole, the industry is keenly aware of the need for solutions that can provide lifetime retirement income options. And while the Agencies can have a tremendous impact in making retirement income solutions more readily available and understandable to millions of working Americans, it is vital that the innovation that is propelling this emerging market be preserved.

The SPARK Institute's members recognize that retirement income is a critical component of financial planning, and their various business models create a broad spectrum of ideas and solutions to this issue. Just as employers have different objectives as plan sponsors, individuals have different retirement planning needs. Some will look for flexibility, whereas others will be willing to give up greater control of their assets in exchange for a higher guarantee.

We do not advocate any particular product or service and urge the Agencies to maintain a competitive environment where a diverse mix of solutions are available, with plan sponsors and participants retaining the discretion to voluntarily utilize the option(s) that best meets their needs.

VI. CONCLUSION

On behalf of The SPARK Institute, we thank the panel for the opportunity to share our views on these important issues, and we welcome the opportunity to respond to your questions.