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

**Submitted Electronically**

April 7, 2009

W. Thomas Reeder  
Benefits Tax Counsel  
Office of Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Michael Julianelle  
Director, Employee Plans  
Internal Revenue Service  
1750 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Nancy J. Marks  
Division Counsel/Associate Chief Counsel (TE/GE)  
Office of Chief Counsel  
Internal Revenue Service  
1750 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Re: **Relief for Employers - 401(k) Non-elective Safe Harbor Contributions**

Dear Mr. Reeder, Mr. Julianelle and Ms. Marks:

The SPARK Institute is writing to request relief for certain sponsors of safe harbor 401(k) plans who, due to the current downturn in economic conditions, are unable to make the three percent non-elective contributions required under Internal Revenue Code (the "Code") Section 401(k)(12) for the entire year.

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 more than 95% of all defined contribution plan participants.

Our members have requested our assistance in seeking prompt relief that would permit an employer to suspend three percent non-elective safe harbor contributions under Section

401(k)(12) of the Code during a plan year rather than forcing employers who cannot afford to make the nonelective contributions to terminate the 401(k) plan. In this regard, we lend our voice in support of the arguments and requests for relief put forward by The American Society of Pension Professionals & Actuaries (ASPPA), in their letter to you dated February 20, 2009.

Time is of the essence since many employers impacted by the economic downturn need immediate relief, without which, they may find it necessary to terminate their 401(k) plans.

\* \* \* \* \*

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

Respectfully,

A handwritten signature in black ink, appearing to read "L. Goldbrum", followed by a horizontal line extending to the right.

Larry H. Goldbrum  
General Counsel