



News Release

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THE SPARK INSTITUTE URGES EBSA TO CLARIFY AND MODIFY PROPOSED TARGET DATE FUND DISCLOSURE RULE

SIMSBURY, CT, January 13 -- The SPARK Institute has submitted a letter to the Employee Benefits Security Administration (“EBSA”) requesting clarification and modification of the proposed regulation for target date fund disclosure. “While we support EBSA’s efforts to educate retirement plan participants about target date funds, we have identified several issues that we believe require changes in order to best serve plan sponsors, participants and service providers,” said Larry H. Goldbrum, general counsel. The comment letter is posted on The SPARK Institute website at <http://www.sparkinstitute.org/comments-and-materials.php>.

The SPARK Institute outlined six issues where it felt changes were required:

“Glide Path” Illustration

Goldbrum noted that the proposed regulation’s requirement that a plan administrator include a chart, table or other graphical representation that illustrates the change in a fund’s asset allocation over time in a way that “does not obscure or impede a participant’s or beneficiary’s understanding of the information explained...” was too subjective, vague and subject to various interpretations. “We are concerned that the standard, as written, lays the groundwork for significant needless and frivolous litigation that will be based on disputes about the clarity of charts and illustrations,” said Goldbrum. “As a result, we are urging EBSA to modify the language to state that ‘the chart, table or illustration is presented in a manner calculated to be understood by the average participant,’ since that language has been used by EBSA in other regulations,” he said.

Risk of Loss Statement

Another concern for the Institute is a requirement that plan administrators include a statement in the disclosures that a participant “may lose money by investing in the alternative, including losses near and following retirement and that there is no guarantee that the alternative will provide adequate retirement income.” “We are concerned that this statement will have the unintended consequence of creating a potentially negative

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perception of target date funds in comparison with other investment options,” said Goldbrum. “All plan investment options involve varying degrees of risk and EBSA should not single out target date funds, since they may be a good choice for many participants,” Goldbrum said.

Fund Design Disclosures

The Proposed Regulation requires an explanation of the age group for whom the alternative is designed, the relevance of the date and any assumptions about a participant’s ... contribution and withdrawal intentions on or after such date. “It appears that EBSA is attempting to clarify for participants whether a particular fund is designed for investment ‘to’ a participant’s retirement date or ‘through’ the participant’s retirement,” said Goldbrum. “We support EBSA’s goal but are concerned that the language used in the proposal is subject to different interpretations by plan administrators, investment managers and other service providers,” said Goldbrum. “An explanation of the type proposed by EBSA would be lengthy and complicated, and is not likely to be readily understood by the average plan participant,” he noted. As a result, The SPARK Institute has suggested revised language for this section.

Required Disclosures for All Qualified Default Investment Alternatives (“QDIAs”)

The Proposed Regulation amends the disclosure rules for QDIAs by requiring plan sponsors to provide participants with more detailed fee and performance information. “We are concerned that some of the newly required information does not directly apply to, or may not be available from, a QDIA that is an investment management service (e.g., ‘managed accounts’) as described under current QDIA regulations,” said Goldbrum. “Accordingly, with respect to a QDIA that is an investment management service, we requested that the identity of the investment manager for the service may be disclosed, that the requirement for historical performance data be eliminated, and that the fee disclosure requirement be modified to account for the unique nature of these investments.”

Content and Timing of Notices

Goldbrum noted that the current QDIA regulations require that participants be furnished with a notice generally when they become eligible to participate in the plan and annually thereafter. “In the time since those regulations were issued, EBSA finalized participant disclosure regulations that require plan administrators to furnish all participants, including eligible non-participating employees, with substantial information about a plan’s investment alternatives, so we are concerned that the combined effect of the disclosures that must be provided under both regulations will likely be to overwhelm and potentially confuse participants,” he said. As a result, The SPARK Institute urged EBSA to modify the Proposed Rule to allow plan administrators to coordinate and combine the content of the required notices and to coordinate their timing so that they can be made together.

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Effective Date

The SPARK Institute requested that EBSA modify the effective date of the proposal from 90 days to one year after it is finalized and published in the *Federal Register* so that plan sponsors and service providers have more time to comply with the extraordinary number of broad and significant new regulations that were issued in 2010. “Providing more time will not only improve the quality of compliance but will also help plan sponsors and service providers to manage the cost of doing so,” said Goldbrum.

The SPARK Institute represents the interests of a broad based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms and benefits consultants. Through the combined expertise of its member companies, the Institute provides research, education, testimony and comments on pending legislative and regulatory issues to members of Congress and relevant government agency officials. Collectively, its members serve approximately 70 million participants in 401(k) and other defined contribution plans.

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