



News Release

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THE SPARK INSTITUTE RAISES CONCERNS OVER “401(K) FAIR DISCLOSURE RETIREMENT SECURITY ACT”

SIMSBURY, CT, August 2 - The SPARK Institute today raised significant concerns regarding the “401(k) Fair Disclosure Retirement Security Act,” stating that the legislation as currently proposed will discourage the formation of new retirement plans, discourage employee participation and savings, significantly increase retirement plan costs, and encourage new, settlement motivated, lawsuits against both plan sponsors and retirement plan service providers. “In our view, this legislation is needlessly cumbersome, inflexible and counterproductive to the goal of increasing retirement savings,” said Larry Goldbrum, General Counsel of The SPARK Institute.

“Although The SPARK Institute supports and encourages greater fee transparency, we are concerned that the proposal requires disclosure of so much detailed and complex information that most participants will simply ignore,” Goldbrum said. “Instead of enlightening participants, the information will mostly overwhelm and confuse those who bother to look at it,” he added. “We are also concerned that these disclosures will become over-complicated with technical details that will be included in order to minimize the risk of litigation, thereby rendering them virtually useless to participants,” Goldbrum said.

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“We are also concerned that in certain respects, the proposed rules duplicate existing requirements under ERISA, and in some cases may be inconsistent with rules and regulations of other regulatory agencies,” he said. “Duplication and inconsistencies make compliance more complicated and costly for everyone involved.” The costs associated with compliance will be significant and ultimately will either be imposed on plan sponsors or paid by plan participants, with little or no perceived benefit, he stated.

The SPARK Institute is also concerned that the disclosure rules obligate service providers to reveal confidential and proprietary information in a way that will make the information readily available to their competitors. “By requiring detailed expense and fee information to be provided to participants and posted on a plan sponsor’s web site, proprietary information included in these statements will easily become available to individual providers’ competitors,” he noted.

“The proposed rules will also expose plan sponsors and service providers to new types of frivolous and costly lawsuits,” said Goldbrum. “Despite imposing extensive reporting requirements on plan sponsors, the proposed rules do not provide any type of safe harbor from fiduciary liability for sponsors that comply. As a result, they will create fertile ground for suits brought by plaintiffs’ lawyers primarily seeking settlements from plan sponsors and service providers perceived to have deep pockets.”

The SPARK Institute recommends that regulators, such as the DOL and SEC, should be permitted to complete their current initiatives that are intended to address and resolve the perceived disclosure issues. A conceptual regulatory framework that provides flexibility to tailor disclosures for various products and service structures should be established instead of rigid and detailed requirements. If regulators believe that additional laws are needed in order to facilitate resolving such concerns, then Congress should adopt legislation that fills the “gaps” that such regulators identify.

The SPARK Institute is the leading voice in Washington for the retirement services industry. Through the combined expertise of its member companies, The SPARK Institute provides research, education, testimony and comments on pending legislative and regulatory issues to members of Congress and relevant government agency officials. This disciplined process and resulting solutions help shape America's retirement future.

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