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Submitted Electronically

November 16, 2006

Mr. Robert Doyle  
Director of Regulations & Interpretations  
Employee Benefits Security Administration (EBSA), Room N-5669  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Pension Protection Act of 2006 - Guidance Priorities

Dear Mr. Doyle:

The SPARK Institute recognizes and appreciates the significant undertakings that the U.S. Department of Labor (the "DOL") faces in connection with providing guidance and issuing regulations with respect to the Pension Protection Act of 2006 ("PPA"). We have reviewed the PPA with our members<sup>1</sup> in order to identify issues that should be given priority in the rule making process.

The successful implementation of the new laws will depend on, among other things, the ability of retirement plan service providers to cost effectively and promptly educate their plan sponsor customers and make necessary changes. Certain aspects of the PPA will require system changes and as you know, such changes require greater advance notice and guidance. Based on the information provided to us by our members, The SPARK Institute requests that the DOL give immediate attention to the following highest-priority issues:

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<sup>1</sup> As you know, our membership is comprised of the retirement plan service providers who are responsible for guiding retirement plan sponsors through the technical and administrative aspects of the PPA, and will also be responsible for updating their products, services and systems in order to facilitate implementation and compliance of the new laws and regulations.

1. Periodic Benefit Statements - PPA Section 508
2. Automatic Contribution Arrangement Preemption - PPA Section 902
3. Pension Benefit Guaranty Corporation (“PBGC”) Missing Participant Support- PPA Section 410
4. Fiduciary Relief During Blackout Periods - PPA Section 621

## **1. Periodic Benefit Statements – PPA Section 508**

As outlined in PPA Section 508, the DOL has been directed to provide model language that must be incorporated into periodic pension benefit statements and delivered quarterly for plans that permit participants to direct their investments (annually for other plans). The new language is to be implemented for plan years beginning after December 31, 2006. We note this leaves very little time for the DOL to create and issue the model language. Many of our members have expressed concern regarding their ability to facilitate plan sponsor compliance with the new requirements given the deadline and the need for guidance from the DOL. Implementation of system changes, programming updates, legal reviews, etc., all of which are necessitated by the new statement requirements, will require a significant amount of time to complete. Some service providers rely on third party vendors to produce participant statements. That will add an additional layer of complexity and delays.

Retirement plan service providers and plan sponsors will have little choice but to make good faith attempts to comply with the new rules pending formal DOL guidance. With respect to the model language, The SPARK Institute requests that guidance be given the highest priority. We also request that the DOL publicly state as soon as possible that reasonable good faith efforts to comply with these new rules will be sufficient until plan sponsors and service providers have had a reasonable amount of time to comply after model language and guidance is provided (e.g., 90-120 days following final guidance). Additionally, we request that the DOL publicly state as soon as possible that it will delay any enforcement actions relating to these new rules until after it provides formal guidance and plan sponsors and service providers have had a reasonable amount of time to comply.

In addition to issues relating to the content of the benefit statements, SPARK Institute members have raised a number of questions regarding the timing and permissible means of delivering benefit statements (e.g., electronic delivery options, single vs. multiple statements, etc.). In particular, The SPARK Institute requests affirmation that a participant’s account holdings or vested percentage can be provided in more than one statement, mailing or disclosure (e.g., explanation of vesting calculation methodology delivered via summary plan description) so long as at least one statement shows the participant’s total account balance for the relevant period. We also seek further DOL comment on the scope of electronic delivery options for such statements including the ability to post statements at a secure web site and alert participants as to how to retrieve the information. Taking into consideration the recent Internal Revenue Service (“IRS”) regulations on electronic notice and consent, we further request that the DOL and IRS coordinate their efforts on electronic delivery options.

## **2. Automatic Contribution Arrangement Preemption – PPA Section 902**

PPA Section 902 provides ERISA preemption regarding any state laws purporting to prohibit or restrict an automatic contribution arrangement from being included in a qualified retirement plan. Section 902 also includes a notice requirement for automatic contribution arrangements. The SPARK Institute interprets the notice requirement as distinct from the grant of preemption but would like clarification from DOL that preemption of state laws is not contingent upon satisfying a notice requirement.

## **3. PBGC Missing Participant Support – PPA Section 410**

The extension of PBGC services to defined contribution plans with respect to missing participants in terminating plans is a welcome addition to the traditional options for dealing with such participants currently available to plan sponsors and plan providers. As such, we anticipate a number of those in the retirement plan community will be interested in pursuing this option once guidance is made available. The SPARK Institute requests that guidance be given priority so that plan sponsors and/or providers can take advantage of these services. In addition, as this service is unprecedented, there are a number of items which require clarification. For example our members have raised the following questions:

- Are plan sponsors required to meet the standards for a diligent search put forth in PBGC Regulation Section 4050.4 or may they continue to rely on FAB 2004-02?
- Must plan and trust documents governing defined contribution plans be amended to reference PBGC as a possible successor custodian in the event of plan termination and missing participants, in order to take advantage of these services?
- May PPA Section 410 be used for small abandoned plans as an alternative to the procedures under the recently issued DOL regulations regarding terminating abandoned plans (DOL Reg. 2520, 2550, 2578)?

## **4. Fiduciary Relief During Blackout Periods - PPA Section 621**

The SPARK Institute notes that guidance is to be provided on PPA Section 621 not later than one year after the date of enactment. Such guidance is to include available safe harbors as well as how fiduciaries may satisfy their responsibilities during a blackout period. We anticipate such guidance will be of utmost importance to retirement plan sponsors as well as retirement plan service providers, as the process of mapping is very common in transitioning from one service provider to another and replacing investments within the investment menu offered under a retirement plan. The SPARK Institute membership has raised several concerns and questions which require clarification with respect to the definition of an option with stated characteristics that are “reasonably similar,” special circumstances surrounding plan mergers in which a reasonably similar option may not be available, and any relief from the 30-day timing requirement in cases where a delay in mapping may be detrimental to plan participants.

Given the importance of this issue to SPARK Institute members, we request that PPA Section 621 be added to the list of items which should be given priority and offer to provide the DOL with specifics upon request.

The SPARK Institute notes that in the interest of time, many retirement plan service providers are diligently working, based on their interpretation of the statute, to comply with the sweeping changes made by the PPA. As a result, our members have raised several questions and concerns which may be of use to the DOL in drafting comprehensive guidance. We welcome the opportunity to share with you the additional substantive issues raised by our members upon your request. In addition, in an effort to collaborate and expedite the process, some of our members have offered to provide sample model language for the DOL to use as a possible starting point in the drafting of such notices and statements.

Thank you for the opportunity to comment on these matters and your consideration of our views. Please do not hesitate to contact us with questions or requests for additional information. We can be reached at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing  
President

/s/

Larry H. Goldbrum  
General Counsel

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