



Submitted Electronically

March 30, 2012

Mr. Michael L. Davis
Deputy Assistant Secretary of Labor
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Request for Transition Relief in Connection with Anticipated Fee Disclosure FAQs**

Dear Mr. Davis:

This is a follow-up to our conversations regarding retirement plan service providers' concerns about their ability to comply with the 408(b)(2) regulations and assist plan sponsors' compliance with 404a-5 regulations (the "disclosure regulations") consistent with anticipated Frequently Asked Questions guidance ("FAQs") that Department of Labor ("DOL") representatives have indicated are being prepared for release prior to the effective dates of the regulations. The SPARK Institute appreciates the DOL's willingness to clarify issues concerning the disclosure regulations that have been raised by service providers, trade groups, participant groups, and plan sponsors.¹ However, as explained in this letter, because the regulations are effective July 1, 2012 and August 30, 2012 (for calendar year plans), if the DOL interprets the disclosure regulations in a manner that is inconsistent with service providers' interpretations and already programmed disclosure solutions, service providers will need additional time to adjust their compliance approaches.

As the DOL knows, service providers have been preparing solutions to comply with the disclosure regulations since the publication of the interim final regulations in July 2010. Given the delayed publication of the final regulations, service providers have proceeded with their compliance efforts based on their reasonable and good faith interpretations of the rules

¹ The SPARK Institute had discussions with DOL representatives in March 2011 and requested clarification and interpretive guidance regarding several issues related to the 404a-5 participant disclosure regulations. The SPARK Institute has not requested additional guidance regarding the final 408(b)(2) regulations because of the timing concerns expressed in this letter.

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as known to them at the time. Additionally, as the DOL knows, in December 2011² and January 2012³ The SPARK Institute expressed great concern about the implications of the delayed release of the final 408(b)(2) regulations. In our earlier letters we explained that changes to the final rules would likely require systems and coding changes, as well as changes to processes, procedures, documents and communications for the vast majority of record keepers. In January 2012, with an impending compliance deadline for the 408(b)(2) regulations of April 1, 2012, it was vital for the final rules to be released immediately, either with no changes or with a delayed effective date. At that time, we also explained that without knowing what the changes might be, and having an opportunity to evaluate them, it was extremely difficult to estimate the time that would be needed to make all of the necessary changes. Unfortunately, service providers, despite their acknowledgement and appreciation of the DOL's intent to provide useful guidance to the regulated community, are concerned that they are in a similar position now because of the anticipated FAQs.

Service providers and plan sponsors have made compliance decisions based on their best interpretation of the regulations and have had to take into account the respective compliance times known to them at various times. The most recent extension provided with the final 408(b)(2) regulations from April 1, 2012 to July 1, 2012 was announced on February 1, 2012. That extension was not guaranteed prior to its official announcement so service providers could not delay their development decisions and executing on their compliance plans until the final regulations were issued. Some service providers have already begun complying with the disclosure regulations. In fact, one service provider has reported that it has already completed making required 408(b)(2) disclosures to all of the plans it services. Similarly, some service providers have already begun sending initial disclosure notices to participants to assist plan administrators with complying with their obligations under 404a-5. As noted, it could not be anticipated that the compliance period would be extended to August 30, 2012 and service providers could not afford the luxury of waiting and risk not having a solution available to help plan administrators meet their obligations by the previous compliance deadline (i.e., May 31, 2012).

If the anticipated FAQs interpret the disclosure regulations in a manner that is inconsistent with how they have been interpreted by the regulated community, it may be impossible for service providers and plan sponsors to reverse course in time for the deadlines. It will also be extremely expensive for service providers who acted diligently in good faith and have already begun or completed their compliance efforts to have to comply again because of unanticipated changes. Additionally, it will be equally expensive and disruptive to plan sponsors to have to repeat a formal fiduciary review that was conducted based on the disclosures that were already furnished. While The SPARK Institute is prepared to discuss with the DOL upon request specific substantive issues where potential changes are of great concern, our members are very concerned about having to effectuate any changes before the July effective date.

² See letter dated December 14, 2011 to Michael L. Davis from Larry H. Goldbrum regarding Impact of the Delayed Release and Potential Changes to the 408(b)(2) Regulations.

³ See letter dated January 6, 2012 to Michael L. Davis from Larry H. Goldbrum regarding Delayed Release of Final 408(b)(2) Regulations.

The SPARK Institute respectfully requests that the DOL provide transition relief for service providers and plan sponsors⁴ from being compelled to change their compliance approaches prior to the current compliance deadlines in order to adhere to FAQs. More specifically, we request that DOL expressly state in the FAQs that a service provider or plan sponsor would be viewed as meeting the requirements of the 408(b)(2) and 404a-5 regulations, respectively, if for the transition period, the service provider or plan sponsor relied (a) on a reasonable and good faith interpretation of the disclosure regulations or (b) on the regulations as interpreted in the FAQs. We request that the transition period begins on the date that the FAQs are issued and ends 12 months thereafter.⁵

Additionally, we note that it is vital that the FAQs and requested transitional relief specify that service providers that furnish required 408(b)(2) disclosure materials (including required 404a-5 information) to plan sponsors, and plan sponsors who furnish required 404a-5 materials to participants (either directly or through a service provider), before or during the transition period not be required to furnish or send the materials again in order to comply with a different interpretation of the rules by the DOL under the FAQs. We urge the DOL to allow service providers and plan sponsors to rely on a reasonable and good faith interpretation of the disclosure regulations for materials furnished before or during the transition period.

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Thank you for considering our views and recommendations on this very important topic. The SPARK Institute is available to provide additional information and clarification regarding this request. Please do not hesitate to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum
General Counsel

⁴ References to plan sponsors are intended to include the plan administrator and responsible plan fiduciary as appropriate, depending on the rule at issue.

⁵ The DOL has granted similar transitional relief in the past. See, e.g., FAQs About the 2009 Form 5500 Schedule C, Q&A 40 (July 2008) (concluding that plan sponsors would not be required to identify a service provider as failing to provide necessary information for completion of the revised Schedule C if the service provider made a good faith effort to complete systems changes in a timely manner but nevertheless failed to fully incorporate DOL guidance for 2009, the first year for the updated Schedule C).