



Filed Electronically

August 1, 2011

Ms. Phyllis C. Borzi
Assistant Secretary of Labor
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Lifetime Income Illustrations for Retirement Plan Participants**

Dear Ms. Borzi:

The SPARK Institute, Inc.¹ appreciates this opportunity to share its views with, and provide recommendations to, the Employee Benefits Security Administration (“EBSA”) regarding providing retirement plan participants with lifetime income illustrations. The SPARK Institute’s members include retirement plan service record keepers and lifetime income product providers who have substantial expertise concerning these products and services, as well as in communicating information about them to plan sponsors and participants. Many of our members already have the capability to prepare lifetime income illustrations and are either already helping or are prepared to help plan sponsors provide illustrations to participants.

The SPARK Institute supports the use of lifetime income illustrations to help participants better understand the amount of income their retirement savings may provide, and whether they need to make changes to how they are saving and investing. However, we are concerned that participants are becoming overwhelmed by the increasing amount of information that is required to be disclosed on or with participant statements. Therefore,

¹ 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. Members include most of the largest firms that provide record keeping services to employer-sponsored retirement plans, ranging from one-participant programs to plans that cover tens of thousands of employees. The combined membership services approximately 70 million employer-sponsored plan participants.

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we urge EBSA to develop guidance, including a safe harbor, that will encourage plan sponsors and service providers to voluntarily provide lifetime income illustrations to participants on benefit statements and other available means, including websites.²

EBSA guidance, including a safe harbor, is vital to encouraging plan sponsors to provide participants with illustrations because it mitigates the increased risk of claims from, and potential liability to, participants and beneficiaries who either misunderstand the illustration or are unhappy with their retirement savings results. As EBSA knows, lifetime income projections can be calculated in many different ways based on different factual assumptions and different payout options. This calculation methodology is complex and can be confusing for plan sponsors and plan participants, and absent guidance and safe harbor protection, many plan sponsors have been unwilling to provide their participants with the information. Plan sponsors fear that the illustrations might be misinterpreted by participants as either a promise of what their benefits might be or a guarantee of benefits. As a result, plan sponsors are concerned about having increased potential fiduciary risk and liability, including liability associated with benefit claims.

The SPARK Institute understands that EBSA is developing a safe harbor in connection with potentially mandating that lifetime income illustrations be included on participant benefit statements. We are concerned that the safe harbor will merely serve to ensure compliance with the benefit statement requirement but will not provide protection for the plan, the plan sponsor, responsible plan fiduciaries and service providers from the increased risks noted above. The SPARK Institute believes that mandating a simplistic one size fits all lifetime income illustration with a limited scope safe harbor will not have the desired result of making useful lifetime income illustrations available to plan participants. Specifically, plan sponsors will likely merely provide participants with only the basic illustration that is mandated and covered by the safe harbor. A safe harbor and additional guidance that provide protection from the increased risks noted above is needed in order to encourage plan sponsors and their service providers to provide more robust and informative lifetime income illustrations and modeling tools.

Our recommendations for guidance and a safe harbor to encourage plan sponsors to provide illustrations are summarized below.

Recommendations for Lifetime Income Illustrations Guidance and a Safe Harbor

We urge EBSA to issue guidance that expressly states that offering, making available or providing lifetime income illustrations, as described below (1) will not constitute the provision of investment advice or any other fiduciary act under the Employee Retirement

² The SPARK Institute recognizes that EBSA is in the process of developing guidance with respect to these matters and appears supportive of having plan sponsors provide participants with lifetime income illustrations. Accordingly, we have kept our comments herein urging such action brief.

Income Security Act of 1974, (2) is merely participant education, and (3) does not constitute the offering or promise of any benefit under a plan.

A safe harbor should provide that the plan sponsor, responsible plan fiduciaries and the plan shall not be liable for claims from participants and beneficiaries resulting from providing participants and beneficiaries with lifetime income illustrations provided that the following conditions are met:

- A. The illustration translates the participant's current or estimated future plan account balance into a monthly income stream for life starting at retirement.
- B. The illustration is based on and calculated using objective criteria, assumptions and methodologies. The safe harbor should include a sample list of permissible criteria, assumptions and methodologies for calculating an income stream. The list should include, but should not be limited to, the following:
 - 1. Growth rate or rate of return on investments.
 - 2. Salary growth rate.
 - 3. Retirement age.
 - 4. Percent of pre-retirement income needed in retirement.
 - 5. Other retirement income sources (e.g., Social Security and pension plans).
 - 6. Pre-retirement contribution rate, including employer contributions.
 - 7. Post retirement withdrawal rate.
 - 8. Inflation rate, including translating a future benefit into "today's dollars" to adjust for an assumed inflation rate.

The safe harbor should specify that the plan sponsor may use the same or comparable criteria, assumptions and methodologies for all participants. However, the safe harbor should provide flexibility in the criteria, assumptions and methodologies so that it covers basic illustrations, as well as those that are more robust. For example, the safe harbor should apply when the plan sponsor provides a calculator that allows participants to personalize an illustration by modifying the criteria, assumptions, methodologies, and payout options. As noted above, the safe harbor should include a sample list of permissible criteria, assumptions and methodologies that is broad and inclusive, and should specifically permit the use of methodologies that illustrate results based on either an annuitization approach or any of a variety of guaranteed or non-guaranteed income stream approaches. Moreover, the safe harbor should specifically state that the list is not exclusive so that it does not inadvertently limit the scope and availability of the safe harbor.

- C. The illustration includes an explanation of the criteria, assumptions and methodologies that were used. The explanation should be written in a manner that is intended to be understood by the average plan participant.

- D. The illustration includes a statement that informs the participant that it is only an illustration and it is not a guarantee or promise of benefits, retirement income or adequate retirement savings.
- E. The illustration is provided to participants either in writing at least once every year on participant statements or is available on a continuous basis through a website. This requirement is intended solely as a condition of the safe harbor and should not otherwise result in a mandate on plan sponsors to provide illustrations or preclude them from deciding to discontinue providing them.

The SPARK Institute believes that any safe harbor should avoid endorsing or appearing to endorse a specific approach or methodology for calculating lifetime income illustrations. As noted above, we are concerned that following an approach or methodology that appears to be endorsed by EBSA will be the primary, or possibly, the only way that plan sponsors will provide illustrations. As a result, participants may not be provided with or given access to information and tools that use different approaches and methodologies, including some that provide more robust information or allow them to personalize the illustration.

Finally, we urge EBSA to specifically extend the safe harbor protection to service providers who are hired by the plan sponsor or the plan to calculate and provide the illustrations, including, without limitation, investment product providers, record keepers and third party administrators. Plan sponsors will generally not be able to provide illustrations to participants without outside assistance and sophisticated tools. Service providers will not be willing to assume the potential risk and liability that the safe harbor is intended to protect the plan sponsor and the plan from. Therefore, in order for retirement income illustrations to become widely available to plan participants, the plan sponsor, the plan and the service providers should be covered by the safe harbor.

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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 these matters. Please do not hesitate to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum
General Counsel

cc: Mr. Michael L. Davis, Deputy Assistant Secretary, U.S. Department of Labor
Mr. J. Mark Iwry, Deputy Assistant Secretary, U.S. Department of the Treasury
Mr. George H. Bostick, Benefits Tax Counsel, U.S. Department of the Treasury