THE SPARK Institute, Inc.

Written Statement of

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Before the

UNITED STATES DEPARTMENT OF LABOR

ERISA ADVISORY COUNCIL

Regarding

Retirement Security

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The SPARK Institute is an industry association that represents the interests of a broad based cross section of retirement plan service and investment providers, including record keepers, mutual fund companies, insurance companies, banks, brokers, third party administrators, consultants, technology solution vendors, and others. Our members include most of the largest service providers in the retirement plan industry and collectively they service more than 62 million participants in 401(k), 403(b) and other defined contribution plans. We appreciate the Council's consideration of our views and urge the Council to support our recommendations in its report to the Department of Labor ("DOL").

Introduction

The employer-sponsored retirement plan system is a fundamentally successful, sound, competitive and innovative system that (1) provides the best way for American workers to invest and save to reach their retirement goals, and (2) provides high quality services and good value for the cost, including more affordable investment options than retail investment products. Additionally, plan sponsors play a critical role in providing valuable and cost effective ways for employees to save for retirement. Many of the features and benefits available through employer-sponsored plans are not available through other savings arrangements. However, improvements can be made to employer-sponsored plans without abandoning the current system. The SPARK Institute believes that refinements to rules, regulations and plan designs are the best way to leverage the existing employer-sponsored retirement plan system in order to adapt to the changing economic realities and needs of American workers. Earlier this year, The SPARK Institute released three white papers examining employer-sponsored retirement plans. The papers summarize the historical benefits and accomplishments of the plans and make recommendations for improvements. Some of the recommendations are summarized in this written statement. Additionally, copies of the white papers are attached hereto.[1]

Employer-sponsored plans should be improved to help working Americans save earlier, save more and avoid taking distributions of the money they have in their accounts before retirement.[2] Mandatory automatic enrollment of employees and automatic escalation of employee contributions should be used as methods to increase participation in workplace savings plans and the rate of savings. Employee contribution and escalation rates should be set so that, when combined with Social Security, they will provide appropriate income replacement at retirement. Additionally, legislators and regulators should adopt new laws and regulations that limit participants' ability to cash out their retirement savings when they change jobs, while maintaining portability attributes.

Additionally, The SPARK Institute recommends the creation of a new simplified and standardized employer-sponsored 401(k) savings plan for small employers. This new arrangement would deal directly with the roadblocks small employers have identified as the reasons for not voluntarily adopting a 401(k) plan. Our recommendations for improving the current employer-sponsored retirement system are also discussed in greater detail below.

[1] The white papers are titled (1) "The Case for Employer-Sponsored Retirement Plans – Benefits and Accomplishments," April 2009, (2) "The Case for Employer-Sponsored Retirement Plans – Coverage, Participation and Retirement Security," May 2009, and (3) "The Case for Employer-Sponsored Retirement Plans – Fees and Expenses," May 2009.

[2] Several other opportunities not specifically discussed herein include helping workers (1) appropriately diversify their savings through asset allocation, (2) protect their savings from market volatility, particularly as they get closer to retirement, (3) provide a steady stream of income throughout their retirement, and (4) minimize the risk of outliving their savings. These issues are discussed more fully in a white paper titled "The Case for Employer-Sponsored Retirement Plans – Coverage, Participation and Retirement Security," The SPARK Institute, May 2009, see pages 10-18.

Roadblocks to and Solutions for Retirement Security

Save Earlier and Save More – For many American workers who are concerned about whether they will have enough money saved for retirement, the root cause of their savings shortfall can be largely attributed to not starting to save early enough and/or not contributing sufficient levels of their income. Service providers, plan sponsors and policy makers have made efforts to rectify these concerns through automatic enrollment, automatic deferral escalation programs, catch-up contributions, tax credits and participant education programs. However, for many employees, the reasons that these programs have not worked have more to do with personal circumstances, habits and attitudes than with the plans that are offered by employers. The reasons include the tendency of young workers to avoid thinking about retirement, economic realities (including the costs associated with near term priorities for many, such as health insurance and housing), and the fact that Americans generally have not been good savers.[3]

The SPARK Institute recommends mandating that all workplace plans include automatic enrollment and automatic contribution escalation features.[4] Participants should be permitted to opt out of the plans, as they may do so today under plans that have voluntarily included automatic enrollment features. Studies suggest that almost all eligible employees who currently do not participate in their employer-sponsored plans would remain participants if they were automatically enrolled.[5] Under automatic enrollment, according to research by The Vanguard Group,[6] the participation rate for new hires was 86%. Only 14% of automatically enrolled employees opted out. In contrast, 45% of employees hired under voluntary enrollment initially joined their 401(k) plans. Automatic enrollment has its strongest results among low-wage and younger employees. After 30 months, 57% of the employees who automatically enrolled also contributed more than the default contribution amount. Additionally, research suggests that the introduction of an automatic contribution rate escalation feature in employer-sponsored plans will result in a significant increase in participant account accumulations – especially for low-

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[3] Prior to the current recession, the savings rate for Americans from 2005 until September of 2008 averaged less than 1%. Personal Savings Rate, U.S. Department of Commerce: Bureau of Economic Analysis, Personal Income and Outlays, March 27, 2009.

[4] Since the release of the white papers, The SPARK Institute has modified its position regarding mandating automatic enrollment and automatic contribution escalation features. Our prior position that was stated in our white papers was that such features should be mandatory only if policy makers conclude that more must be done to force employees to start saving earlier and to save more. However, for a number of reasons, including our assessment of the public debate on retirement saving issues, we believe that Congress should take these steps to accomplish the important goal of getting more American workers to start saving earlier in their working careers and to save more.

[5] James Choi, David Laibson, Brigitte Madrian, Andrew Metrick, "Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance, 2001;" Brigitte C. Madrian, "Savings in America: Helping Individuals Provide for Their Own Retirement, 2001;" James Choi, David Laibson and Brigitte Madrian, "Plan Design and 401(k) Savings Outcomes, 2004."

[6] Vanguard: "Measuring the Effectiveness of Automatic Enrollment." V 31. December 2008.

income workers. The automatic escalation feature is likely to increase overall accumulations between 11% and 28% for participants in the lowest-income quartile.[7]

Discourage Early Withdrawals – Supporters and critics of the workplace retirement system have expressed concerns that the current laws and regulations create too many opportunities for participants to withdraw their savings before retirement. Participants have easy access to their savings prior to retirement through distributions, particularly when they change jobs, which creates a serious threat to retirement savings and security. Employees age 25 and older stay at each job for about five years.[8] According to recent research, when employees in employer-sponsored retirement plans move to a new employer, 40% of them "cash out" their account balance and don't roll it over to their new employer's retirement plan or to a rollover IRA. While most of those who cash out have low balances (56% have less than $5,000), when employees continually cash out, they do lose "savings momentum".[9]

Another concern is that liberal loan programs create a threat to retirement savings and security. Loan programs initially were launched to help encourage employees to participate in defined contribution plans. But today, that enticement is seen by many as an unnecessary tool. The vast majority of participants in plans with loan programs do not borrow from their plans. And those that do tend to take out very small loans.[10] Given the successes of employer-sponsored plans and American workers' better understanding of the need to save for retirement, however, liberal loan provisions now may be potentially more harmful than beneficial.

The SPARK Institute recommends that legislators and regulators adopt new laws and regulations that limit participants' ability to cash-out their retirement savings when they change jobs. New rules and regulations should require plan participants that no longer work for the plan sponsor to either leave their accounts in their former employer's plan, transfer their savings to their new employer's plan, or to transfer their account balances to an IRA. Additionally, policy makers should encourage plan sponsors to limit participants' ability to take loans from their plan accounts.

Universal Standardized 401(k) Plan for Small Employers – Much has been said and written about how many American workers do not have access to employer-sponsored retirement plans. Small employers are less likely to offer a 401(k) plan because of potential liability and cost issues.[11] The SPARK Institute recommends the development and adoption of a simplified and standardized employer-sponsored 401(k) savings plan for small employers that addresses small

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7 VanDerhei, Jack, et al. "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2007." EBRI Issue Brief No. 324, December 2008.

8 U.S. Department of Labor, Bureau of Labor Statistics news release, September 26, 2008.

9 Brightwork Partners "Distributions from Qualified Plans Projected Through 2008."

10 VanDerhei, Jack, et al. "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2007." EBRI Issue Brief No. 324, December 2008.

11 "The Case for Employer-Sponsored Retirement Plans – Coverage, Participation and Retirement Security," The SPARK Institute, May 2009, see pages 6-9.

employers' concerns. A universal standardized 401(k) plan program should include the following features and requirements:

1. Must be offered by any small employer (i.e., less than 100 employees) in business for at least one year, with at least one non-owner employee.
2. Must include mandatory enrollment and contribution escalation features with participant opt out.
3. Impose the same contribution limits as for regular 401(k) plans.
4. Be governed by a single government approved prototype plan document. The use of a model plan by all vendors and employers would substantially reduce administrative costs and would relieve employers of the enormous and costly burden of ensuring that their plan documents comply with applicable legal requirement.
5. Limited plan features to prevent pre-retirement leakage (i.e., no loans or hardship withdrawals).
6. No discrimination testing. The elimination of discrimination testing will substantially reduce the compliance administrative burdens. The requirements that all employers offer a plan and that such plans include mandatory enrollment offset the need for such testing by providing access to a plan for all employees and requiring employees to affirmatively opt out if they choose not to save. Moreover, historical data shows that the vast majority of automatically enrolled employees stay in the plan.
7. No employer contribution requirements.
8. Investment options that meet specified minimum requirements for broad based investment choices. Investment options can be chosen by either the employer, if it prefers to do so and the service provider's arrangement allows, or determined by the service provider as part of its product package. Employers and service providers would be protected from potential liability for investment losses for investments that satisfy safe-harbor criteria.
9. The employer would choose the vendor and program to offer, but because all such programs would be subject to the same or similar administrative provisions and features, an employer would be in a position to readily compare plan and investment costs from vendor to vendor.
10. In order to help reduce administrative costs and leverage potential investment option economies of scale among many participating small employers, vendors should be permitted to aggregate assets across plans and employers, provided that individual plan and participant assets can be separately identified and accounted for.

The SPARK Institute believes that this type of arrangement can provide a cost-effective way for more employees to be able to save through workplace savings plans and to leverage the current 401(k) system infrastructure and experience. We note however, that we oppose any mandatory employee savings program that requires the government to be the guarantor of a minimum rate of return, and that limits the investment options available to employees. We urge legislators and regulators to consider and support the development of the universal standardized 401(k) plan concept outlined herein in order to help more workers employed by small employers to gain access to 401(k) plans.

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We appreciate the Council's consideration of our views on these issues. We encourage the Council and the DOL to use its resources and authority to promote our recommendations.