THE SPARK Institute, Inc.

Submitted Electronically

July 31, 2013

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Pension Benefit Statements Project (RIN 1210-AB20)**

Ladies and Gentlemen:

The SPARK Institute, Inc. appreciates this opportunity to comment on the Advance Notice of Proposed Rulemaking regarding lifetime income illustrations on participant benefit statements (the "Notice").[1] Our member companies include retirement plan 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.[2] They are the companies that plan sponsors and administrators turn to and rely on for help in understanding, implementing and complying with regulatory requirements. Furthermore, these companies maintain the systems and other infrastructure that create and provide statements to participants on behalf of plan sponsors and administrators. Consequently, although any new requirements will be the primary responsibility of the plan sponsor or plan administrator, as a practical matter, the vast majority of the compliance work will be done by our member companies. Many of our members have the capability to prepare lifetime income illustrations and are already helping plan sponsors provide them to participants.

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[1] 78 Fed. Reg. 26,727 (May 8, 2013).

[2] 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. Collectively, our members serve approximately 70 million participants in 401(k) and other defined contribution plans.

As we stated in our letter to the Department of Labor (the "Department") on August 1, 2011, we support 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.[3] We support guidance from the Department that will encourage plan sponsors and service providers to voluntarily provide lifetime income illustrations to participants on benefit statements and through other available means, including web-based tools.[4]

Following are our views and concerns about certain approaches the Department is considering, our recommendations and requests for guidance, and our responses to many of the questions raised in the Notice.

A. General Views and Concerns

The Department requested comments regarding a significant number of issues related to the variables, methodologies and assumptions for projecting account balances and converting them into income streams under the general rule and safe harbor. We have discussed the particular methodologies being considered and the Department's questions with our member companies. Their views and opinions vary because of the different approaches and philosophies they have about projecting retirement income and presenting the information to participants. Financial professionals who are knowledgeable about these matters can reasonably disagree about them. For example, financial professionals disagree about whether seven percent is an appropriate investment rate of return assumption for the safe harbor being considered. Therefore, as discussed further throughout this letter, we believe that any guidance, requirement or safe harbor

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[3] Letter from The SPARK Institute Re: Lifetime Income Illustrations for Retirement Plan Participants available at http://www.sparkinstitute.org/content-files/File/SILetterLifetimeIncomeIllus8-1-11Final.pdf.

[4] We are concerned about the Department's authority to require plan sponsors to provide lifetime income projections on participant statements under the statutory authority cited in the Notice. As the Department noted, Section 105(a)(2)(A)(i)(1) of the Employee Retirement Income Security Act on 1974 ("ERISA") "requires a benefit statement to indicate the participant's or beneficiary's 'total benefits accrued'." The Department also references Section 505 of ERISA that gives it authority to issue regulations that are necessary or appropriate to carry out the provisions of Title I. The SPARK Institute does not believe that projections of a participant's possible future account balance and related lifetime income stream that are calculated using a significant number of assumptions for complex variables can be equated to a participant's total accrued benefits. Further, as the Department has acknowledged, service providers and plan sponsors are concerned about participants misinterpreting the illustrations on benefit statements as promises or guarantees of benefits. The Department's statutory basis for requiring the projections on the statements and the acknowledged fact that they are merely illustrations are seemingly inconsistent. We request that the Department include a more detailed analysis of the authority it is relying on for requiring the projections and illustrations on statements when it formally proposes regulations.

should avoid endorsing or appearing to endorse particular approaches, methodologies, variables or assumptions over any others that are reasonable.

As noted in the preamble of the Notice, the Department believes that providing lifetime income information will help change participants' perception of retirement savings from a savings account to a vehicle for income replacement.[5] The Department also explained its principles in developing the standards, rules and assumptions, including that (1) the projections are meaningful, (2) the projections are not overly burdensome to perform, and (3) the regulations do not disturb current projections and best practices or stifle innovation.[6]

We agree with the foregoing principles. However, we are concerned that the approaches, methodologies, variables and assumptions that appear to be favored by the Department in the Notice will become the primary, or possibly the only, way that plan sponsors will be willing to provide income illustrations and planning tools. Despite the Department's good intentions, favoring certain approaches, methodologies, variables and assumptions or providing a narrow safe harbor as presently constructed in the Notice is likely to lead to standardization in the retirement plan community. It is also likely to preclude supplemental and complementary tools that enable more robust modeling by plan participants. We are concerned that plan sponsors are likely to provide ***only*** those illustrations and tools that conform to the Department's specified approach because of their concerns that doing anything more would subject them to potential liability. Plan sponsors' interest in limiting such potential liability by leveraging the narrow safe harbor is not likely to be overcome or addressed by the broader general rule under consideration by the Department. Such general rule may permit, but does not provide adequate protection for more robust modeling tools that are available.

Consequently, the requirement to provide illustrations currently under consideration, combined with the limited safe harbor, may result in participants not being provided with more robust information and tools that rely on other reasonable approaches, including some that allow participants to customize their information. Participants who currently have such tools available to them could lose access if plan sponsors are uncomfortable providing information that is not specified by the Department or covered by a safe harbor.[7] Such results are inconsistent with the Department's objectives to avoid disturbing current projections and best practices, and avoid stifling innovation.

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[5] 78 Fed. Reg. 26,729.

[6] Id. at 26,731.

[7] For example, in one study conducted in 2012, 81 percent of plan sponsors surveyed reported that their defined contribution plan participants are provided the ability to model their projected monthly retirement income online. MetLife, *Retirement Income Practices Study* at p.8 (June 2012).

B. Recommendations and Requests for Lifetime Income Illustrations Guidance

1. Providing Lifetime Income Illustrations is Participant Education - We urge the Department to issue guidance that expressly states that offering, making available or providing lifetime income illustrations, in accordance with such guidance (1) is participant education, (2) will not constitute the provision of investment advice or any other fiduciary act under ERISA, and (3) does not constitute the offering or promise of any benefit under a plan.

According to our member companies that are record keepers and lifetime income product providers, plan sponsors are concerned about providing lifetime income illustrations to participants. Guidance from the Department that providing illustrations and projections based on reasonable assumptions, taking into account reasonable investment theories and actuarial practices, is participant education and not fiduciary advice will provide useful comfort to plan sponsors. We request that the Department issue guidance in a manner comparable to Interpretive Bulletin 96-1 ("IB 96-1") which distinguishes between participant investment education and advice. IB 96-1, which is widely accepted and followed by the retirement plan community, defines acceptable non-fiduciary participant investment education, but does not specifically address lifetime income illustrations or related retirement income information.

We believe that such guidance is vital to encouraging plan sponsors to voluntarily provide participants with illustrations because it will help mitigate the increased risk of claims from, and potential liability to, participants who either misunderstand the illustration or are unhappy with their retirement savings results. As discussed herein, lifetime income projections can be calculated in many different ways based on different factual assumptions and different payout options. Most plan sponsors are generally not able to provide illustrations to participants without outside assistance and sophisticated systems. Even though many service providers are willing and able to help plan sponsors furnish illustrations, some sponsors have been unwilling to take advantage of the tools available to do so because of the risks and concerns noted above.

Service providers, including product providers, record keepers and third party administrators, will also benefit from the requested guidance. They will be able to help plan sponsors furnish illustrations within the scope of the requested guidance without assuming the additional potential risk and liability that has deterred some plan sponsors. This will encourage more plan sponsors to voluntarily furnish illustrations and facilitate working with their service providers to do so.

Finally, the requested guidance would also eliminate the need for a safe harbor and address our concerns about the narrow safe harbor the Department is considering. We are concerned that a narrow safe harbor will not have the desired result of making more useful lifetime income information and tools available to plan participants. As noted above, plan sponsors are likely to provide participants with only the basic illustration that is required and covered by the safe harbor. However, guidance from the Department which clearly provides that furnishing lifetime income illustrations is participant education will encourage plan sponsors to make more informative illustrations and modeling tools available.

2. <u>Any Requirement to Furnish Income Illustrations Should be Simple and Flexible</u> - The SPARK Institute prefers guidance from the Department as described above that will encourage plan sponsors and service providers to <u>voluntarily</u> provide lifetime income illustrations to participants. However, if the Department concludes that lifetime income illustrations are to be required, we respectfully request that such requirement be general and conceptual, and that the Department also adopt a broad and flexible safe harbor that covers multiple approaches and forms of delivery. For example, a simple and flexible requirement could oblige plan sponsors to provide participants with a projected future account balance and an estimate of the retirement income that may be derived from such savings. We urge the Department to avoid requiring or favoring specific approaches, methods, variables, assumptions and forms of delivery in order to avoid outcomes that, as noted throughout this letter, are inconsistent with the Department's objectives and are counterproductive for plan sponsors and participants. A simple and flexible requirement would also minimize the compliance costs that will ultimately be borne by participants.

3. <u>Any Requirement to Furnish Income Illustrations Should be Accompanied by a Broad and Flexible Safe Harbor</u> - If the Department determines that it is necessary to require that income illustrations be furnished, then all lifetime income illustrations and projections which are based on reasonable assumptions, taking into account reasonable investment theories and actuarial practices, should be covered by a broad and flexible safe harbor. Our recommended approach will address the concerns we have about the Department favoring or appearing to favor a particular approach for providing illustrations over others that are also reasonable. A broad and flexible safe harbor is consistent with the Department's goals of preserving existing tools and avoiding stifling innovation.

The systematic withdrawal and annuitization approaches are currently being used by plan sponsors and service providers. In order to avoid appearing to favor one of those approaches over the other, we request that the Department consider identifying each as reasonably acceptable, provided that the illustrations and projections are based on variables and assumptions that are reasonable, taking into account reasonable investment theories and actuarial practices.

We urge the Department not to dictate or favor the particular variables or actuarial assumptions to be used in the calculations. Variables and assumptions that are dictated in regulations will be difficult to modify, as needed, in the future in order to accommodate changes in the U.S. economy, innovations in income products and related services, changing participant preferences and new technology.

Further, plan sponsors and service providers may, based on the advice of legal counsel due to concerns about potential liability, discontinue offering materials and tools that are not covered by a narrow safe harbor. Consequently, as previously noted, an overly prescriptive requirement and narrow safe harbor is likely to be counterproductive to the Department's goals of preserving existing tools and avoiding stifling innovation.

Following is additional information about the systematic withdrawal and annuitization approaches.

a. Systematic Withdrawal Approach - The SPARK Institute urges the Department to specify that the "systematic withdrawal" or "draw down" approach is a reasonably acceptable method for providing lifetime income illustrations, provided that such illustrations are based on reasonable assumptions, taking into account reasonable investment theories and actuarial practices.

In the Notice, the Department states that it favors the annuitization approach over the systematic withdrawal approach because of its goal to provide participants with information about income for the entirety of their lives, not just a portion of them. Although the annuitization approach may appeal to the Department because of the guaranteed lifetime income issue, the vast majority of plans currently do not offer in-plan annuity products that would allow participants to replicate the income stream in the illustration.[8] Additionally, the systematic withdrawal approach may provide more conservative income estimates that have a high probability to last 30 or more years. For example, in today's low interest rate environment, a single-life single-premium immediate annuity may provide a monthly income of $500 per month, or $6,000 per year (a six percent rate on a $100,000 premium). Alternatively, a conservative systematic withdrawal approach for a diversified portfolio - designed with inflation adjustments and a high probability to last 30 or more years - will likely provide 3.75 percent income in the first year: $312.50 per month, or $3,750 per year, from a $100,000 account.

The systematic withdrawal approach is also useful for individuals who are unwilling or may be unable to annuitize their accounts because they want or need to have their savings available for unexpected expenses (e.g., medical bills). For these individuals, illustrations calculated using a conservative systematic withdrawal approach may be more meaningful.

Our member companies that currently calculate retirement income using the systematic withdrawal approach urge the Department to consider that "lifetime" income is indeed the goal of conservatively constructed draw down plans. The example the Department uses to illustrate the depletion of a

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[8] See Id. at p. 17.

retiree's savings (four percent withdrawal, with account exhaustion in 25 years) relies on an unrealistic assumption - a constant zero rate of return. The four percent rule-of-thumb for systematic withdrawals is based on a portfolio allocated for a long investment time horizon and presupposes real investment returns with a high probability of exceeding withdrawals. That draw down method would not be appropriate for a retiree invested so conservatively that his or her account would likely be depleted in 25 years. Further, the four percent withdrawal approach is a crude tool that does not reflect the way many investment managers calculate expected future income. Today, many investment managers who tailor withdrawal strategies for retirees take individual asset allocations into account because sustainable withdrawals for lifetime income are functions of the expected returns of multiple asset classes.

Rather than rely on the crude four percent rule-of-thumb, many providers today use personalized stochastic methodologies, both to project future account balances and to convert those balances into lifetime systematic withdrawal income streams. Using the Department's own example - the case of a participant who retires at age 65 and dies at age 94 - a common methodology would be to develop a withdrawal percentage with a high probability of lasting to age 95. This is done through simulation, running thousands of scenarios projecting possible real returns for the asset classes in the retiree's own portfolio. Some SPARK Institute member companies consider this a best practice because it produces a personalized and conservative estimate of sustainable spending from retirement savings.

Given the limited number of retirees who annuitize any portion of their accounts, and the likelihood that the majority will continue to take lump sums or periodic withdrawals, we believe that the systematic withdrawal approach is an appropriate alternative to the annuitization approach. Additionally, the potentially more conservative illustrations under the systematic withdrawal approach may encourage participants to save more and encourage spending in retirement that may be more sustainable over the long term.

b. <u>Annuitization Approach</u> - As noted above, the Department has stated that it favors the annuitization approach. We request that the Department include this among the reasonably acceptable approaches, however, without encouraging its use over the systematic withdrawal approach. We urge the Department to allow plan sponsors and service providers to use any annuitization approach that is reasonable, and any variables and assumptions that are reasonable, taking into account reasonable investment theories and actuarial practices.

There are many ways to prepare an illustration using the annuitization approach. Some service providers are either already helping or are able to help plan sponsors provide illustrations based on a period certain annuity calculation. Some favor this approach because of its simplicity, thereby making it easier to explain and easier for participants to understand. For example, by assuming the same starting point or retirement age, and the same expected mortality age for all participants, then the time period between normal retirement age and death will be the same for such participants. Further, if the default retirement age for all participants in this example is assumed to be age 67, and a unisex mortality age of 92 is used, a lifetime income illustration for a 25 year period certain annuity benefit could be used to provide simple illustrations. This type of simple illustration can be easier to explain to participants.

4. Any Safe Harbor Should Cover Service Providers - As noted above, plan sponsors will generally not be able to provide illustrations to participants without outside assistance and sophisticated systems. Service providers will not be willing to assume the potential risk and liability that a safe harbor is intended to cover for plan sponsors. Therefore, in order to facilitate the process of plan sponsors working with their service providers, we urge the Department to specifically extend any and all safe harbor protection to service providers who are hired by the plan sponsor or the plan including, without limitation, product providers, record keepers and third party administrators.

5. Form of Delivery - The SPARK Institute urges the Department to allow plan sponsors to provide illustrations to participants (i) on their benefit statements, (ii) on separate reports, or (iii) by making them available on a continuous basis through a website with appropriate notice. Many service providers are either able to help plan sponsors furnish or are already helping them furnish illustrations to participants through one or more of these methods. A requirement to provide illustrations on benefit statements will result in (i) less effective communications with participants, (ii) counterproductive standardization, and (iii) increased compliance costs that will ultimately be borne by participants.

a. Paper vs. Electronic Media - We are especially concerned about a requirement to furnish illustrations on paper participant benefit statements. The SPARK Institute raised similar concerns in a letter, dated March 25, 2013, to the Department about its pending survey regarding lifetime income illustrations on benefit statements.[9] We commented that the Department's proposed survey materials about participant preferences for receiving lifetime income illustrations seemed to have an embedded bias toward paper statements delivered through the U.S. Mail.

Field Assistance Bulletin Number 2006-03 (the "FAB"), authorizes the use of electronic media as the default method of delivery of participant benefit statements, provided certain requirements are met. Millions of participants do

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[9] Letter from The SPARK Institute Re: Lifetime Income Illustrations for Retirement Plan Participants available at http://www.sparkinstitute.org/content-files/File/SPARK-Comments-Re-DOL-Statements-Survey-3-25-13-FINAL.pdf.

not receive paper statements and, instead, have access to websites that provide robust tools, including print-on-demand statements and interactive lifetime income calculators.[10] The FAB has provided a workable electronic disclosure framework for over six years, during which time there have been no significant problems identified in terms of participant receipt of plan information.

The SPARK Institute would oppose any rules that limit plan sponsors' and service providers' ability to use electronic media as the default method of delivery of participant benefit statements.[11] A requirement to deliver lifetime income illustrations through the U.S. Mail will significantly increase plan expenses which are ultimately passed on to participants.

b. <u>Stifling Innovation - Ineffectiveness of Paper</u> - Over the past 30 years, few industries, if any, have devoted as much time, money and resources to studying effective communication as 401(k) plan service providers. This is because of the basic premise of such plans - that employees will engage in retirement planning, actively defer significant portions of their incomes, and learn and apply the fundamentals of investing. When 401(k) plans were new, providers built significant participant education departments, and staffed them with experienced communication professionals. The goals of those efforts were to teach investing to workers eligible to participate in such plans, encourage them to save for retirement and to make informed decisions. In the early days, participant communications relied mostly on printed materials and were generally heavy on text. Today, many plan service providers use multiple channels to reach participants, and study their contact behavior and trends in channel utilization and effectiveness.[12] The clearest trend is the continued growth of the internet as the dominant contact channel.

Service providers and plan sponsors have innovated extensively to overcome participant disengagement and the general ineffectiveness of printed materials. Benefitting from academic research in behavioral economics, service providers began to understand that participants actively *avoided* certain communications about their retirement plans because the volume of

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10 See MetLife, *Retirement Income Practices Study*, supra note 7.

11 If the Department is contemplating limiting the use of electronic media as the default method of delivery of participant benefit statements as part of this lifetime income project, we respectfully request that it review its investigative and audit files, as well as its participant assistance data bases, for purposes of identifying, and making public, complaints and data relating to electronic disclosure problems or failures.

12 See Vanguard, "Access methods and the internet" in *How America Saves 2013* at pp. 90-93 (June 2013).

information, the jargon, and the complexity of choice provoked stress.[13] The real advances in retirement readiness over the past decade have come not from more printed education, information or disclosures, but from innovations that radically simplify participant decision-making: advice, negative elections, and advances in web design and information architecture.

Based on the experiences of our member companies that are leaders in the retirement plan industry and have significant experience with these matters, requiring the illustrations and projections to be included on printed statements is not likely to be broadly effective in changing participants' perceptions of retirement savings from a savings account to a vehicle for income replacement. We are concerned that under the approach being considered by the Department, plan sponsors will only provide participants with the specific safe harbor illustration on their benefit statements and discourage use of all other tools and materials. Such required illustrations are not an appropriate substitute for more robust planning tools and other communication methods that are currently available.

c. Significant Complexity and Participant Fatigue - The SPARK Institute also believes that the approach under consideration by the Department will make participant statements more complicated and have the unintended consequence of creating disincentives for them to review the information. As discussed throughout this letter, if the Department adopts a narrow safe harbor or appears to favor a particular methodology, plan sponsors are likely to only provide illustrations pursuant to the Department's preferred approach. Legal counsel for plan sponsors and service providers will insist on including comprehensive notices, warnings and disclaimers to address their concerns about potential claims and liability. They are also likely to include additional disclaimers and notices where the illustrations follow the Department's rules but otherwise deviate from their preferred approaches for calculating and presenting illustrations and projections. Consequently, the information that will accompany the actual illustrations is likely to be long and cumbersome. Such material, when added to information and disclosures already on participant statements, could result in participant fatigue and make it less likely that they will review important information on such statements.

C. Concerns about Certain Variables and Assumptions under Consideration for Projecting and Converting Account Balances

We have discussed the particular methodologies being considered and the Department's questions with our member companies. In addition to our general concerns about the Department favoring certain approaches and assumptions, we have specific concerns about some of the requirements and conditions that are under consideration. These items,

[13] See Sheena S. Iyengar, Wei Jiang, and Gur Huberman, "How Much Choice is Too Much?: Contributions to 401(k) Retirement Plans" (2003).

which are discussed below, will require system modifications to accommodate new logic and access new information from outside sources. Such changes will be costly, overly burdensome to accommodate, and are inconsistent with current best practices. Further, such requirements, and using such variables and assumptions, will not make the projections significantly more meaningful for participants.

1. Normal Retirement Age - The Department is considering requiring the use of a participant's normal retirement age under the terms of the plan for certain calculations. Service providers who are already able to provide illustrations on statements typically use an assumed retirement age for all participants (e.g., 65). Participants are also able to customize such date using web-based modeling tools. However, the modeling systems do not maintain or have access to each plan's normal retirement date information. Additionally, having to track and calculate years of service for plans that include such a requirement before an individual reaches normal retirement age will further complicate the illustrations. The approach being considered by the Department will require costly reprogramming of existing systems and tools. According to our member companies, participants are generally unaware of their plan's official normal retirement date, and in some cases, a plan may not have an official normal retirement date. Requiring the use of such date instead of a reasonable assumed age is of little, if any, value under the circumstances. We urge the Department not to limit or discourage plan sponsors and service providers from using any reasonable retirement age (e.g., 65) by favoring another approach or imposing related conditions on any safe harbor. Our requested approach will simplify the system development and modifications that are needed and reduce the costs of compliance, which are typically passed on to the plan and ultimately borne by the participants.

2. Form of Payment - The Notice indicated that the Department is considering requiring that married participants be furnished with two income illustrations (e.g., a single life annuity and joint and 50 percent survivor benefit). The Department asked whether there would be substantial cost savings in not having to track marital status and requiring both illustrations to be provided to all participants. Having to track marital status will add significant complexity and costs for service providers. Most service providers do not have that information in their record keeping systems, so it is unavailable for preparing the illustrations. Participants' marital status can change frequently due to marriage, death and divorce. Further, participants may not always inform the plan sponsor of such changes. Existing web-based tools may allow participants who want survivor annuity information to customize their request by entering their marital status. We do not believe that requiring plan sponsors to furnish an additional illustration for a joint and survivor annuity to married individuals is necessary for the Department to achieve its stated goal. Additionally, participants are generally unable to receive payments from their defined contribution plans in the form of a joint and survivor annuity because most of the plans are not subject to the joint and survivor rules.

Therefore, we urge the Department not to require plan sponsors to furnish joint and survivor annuity projections to any participants. Participants can also be provided with a link to the Department's web-based calculator and service providers' web-based tools for illustrations of other available income payment options. Our requested approach will simplify the system development that is needed and reduce compliance costs without impeding achieving the Department's goals.

3. Expected Mortality - The Notice indicates that the safe harbor mortality assumption under consideration is the applicable mortality table under Section 417(e)(3)(B) of the Internal Revenue Code (the "Code"). The Department gave the following three reasons for preferring this approach: (i) it is updated periodically; (ii) it is unisex and; (iii) it is widely available and known to plan service providers. Our member companies are concerned that using the Code tables, or any outside sources of information that change regularly, creates extra complexity and costs. In order to rely on the safe harbor that is currently being considered, systems will have to be programmed to access and use Code mortality tables every time statements are produced. Doing so will be costly, overly burdensome and provide little value in comparison to other alternatives.

We urge the Department not to limit or discourage plan sponsors and service providers from using any reasonable mortality assumptions by favoring a specific approach or imposing related conditions on any safe harbor. For example, plan sponsors and service providers should be permitted to use the same assumed age for all participants. Such an approach strikes a simple balance that is consistent with current best practices, simplifies any required system development and reduces compliance costs.

4. Interest Rate for Mortality Period - The Notice indicates that the Department is considering a safe harbor interest rate equal to the 10-year constant maturity Treasury security rate for converting account balances to an income stream. We are concerned that using such rate will create extra complexity and be costly. The Department acknowledged in the preamble that no single interest rate assumption is perfect for all participants. Our member companies agree and also believe that it is unnecessary and unduly burdensome for the safe harbor rate to be one that changes frequently. In order to use such rate, systems will have to be programmed to access Treasury security information from an outside source every time statements are produced. Doing so will be costly and provide little, if any, value in comparison to other alternatives.

The Department appears to prefer the Treasury rate because it is more current and may increase the accuracy of illustrations provided to workers who are close to retirement. However, the illustrations that are being considered should not be used as a financial planning tool, particularly by older participants. These participants can get more precise information from other sources including web-based tools that allow them to input their own information. Additionally, the

Department has already acknowledged in the preamble to the Notice that the proposed interest rate is less useful for younger participants.

We urge the Department not to dictate the use of a specific interest rate for the mortality period under a general rule, any requirement to provide income illustrations or as a condition to safe harbor protection. Instead, plan sponsors and service providers should be permitted to create illustrations based on reasonable assumptions, taking into account reasonable investment theories and actuarial practices. This approach is consistent with current best practices, simplifies any required system development and reduces compliance costs.

D. **FINRA Guidance**

Our member companies believe that it would be helpful and necessary to have guidance from the Financial Industry Regulatory Authority ("FINRA") that lifetime income projections required by the Department would not be subject to the National Association of Securities Dealers Rule 2210(d)(1)(D) (regarding predictions and performance projections). We urge the Department and FINRA to work together. Further, we request that any guidance issued by FINRA also cover non-ERISA-covered plans. We recognize that such plans are not subject to the Department's jurisdiction. However, The SPARK Institute and several other trade groups are currently working to resolve a similar issue in connection with guidance that the Department obtained from the Securities and Exchange Commission ("SEC") and FINRA about 404a-5 participant disclosures. The 404a-5 relief mentioned in the Notice that was obtained by the Department from the SEC and FINRA only applies to ERISA-covered plans. Consequently, service providers are currently unable to satisfy requests from non-ERISA-covered plans for certain information provided to ERISA-covered plans because the granted relief does not apply. The SPARK Institute is prepared to collaborate with the Department and FINRA, as needed, to address the issues related to non-ERISA-covered plans.

E. In-Plan Lifetime Income Options

The Department has requested comments regarding how to factor in-plan lifetime income options into the illustrations under consideration. We urge the Department to allow plan sponsors and service providers broad flexibility in determining how to treat in-plan options and how to factor in the actual guaranteed income in participants' accounts. Participants who have already purchased in-plan income options will continue to be provided with information about the actual value of their guaranteed income. Plan sponsors should be permitted to provide illustrations and projections to participants in plans that offer in-plan lifetime income options following any reasonable approach, taking into account reasonable investment theories and actuarial practices.

F. <u>Responses to Other Questions Asked by the Department</u>

1. Costs and Benefits - The Department has asked for information about the costs and benefits of including the illustrations on pension benefit statements. Additionally, the Department asked how the costs of the contemplated lifetime income illustrations might be reduced without compromising the anticipated benefits.

The SPARK Institute supports the use of lifetime income illustrations. We agree that participants benefit from such information because it educates them about the amount of income their retirement savings may provide. Further, the participants may realize that they need to make changes to how they are saving and investing. As noted above, The SPARK Institute believes that plan sponsors should be allowed to provide illustrations to participants on their benefit statements, on separate reports, or by making them available on a continuous basis through a website with appropriate notice. Many of our member companies are already providing income illustrations on participant statements.

However, we are concerned that having to make changes to systems in order to conform to specific methods, variables and assumptions that deviate from current practices - in order to comply with a requirement or as a condition for safe harbor protection - will be costly. As discussed above, requirements that will add significant cost and complexity to this process include having to program systems to use certain plan specific and participant information (e.g., normal retirement age and marital status) and to reference outside tables and sources of information (e.g., mortality tables and interest rate assumptions). The approach under consideration by the Department will be especially difficult and costly for service providers that are not insurance companies and that currently follow the systematic withdrawal approach for calculating illustrations. Such companies may lack the actuarial expertise to shift to the annuitization approach that the Department is currently favoring.

We are also concerned that the illustrations and their associated disclosures and disclaimers will be lengthy and add to the length of existing statements. Having to add just one page will significantly increase the cost to produce and furnish statements. Such costs are typically passed on to the plan, and ultimately paid by participants.

2. Annual vs. Quarterly Illustrations - The Department asked whether there would be substantial cost savings if illustrations were required only annually rather than quarterly. According to our member companies that build and maintain the systems that produce statements, there will be <u>no</u> significant cost savings by only requiring information to be provided annually. Moreover, such companies believe that building the system functionality to provide illustrations on some but not all quarterly statements will be more difficult and costly. As

noted above, cost savings can be achieved by allowing multiple forms of delivery and not requiring illustrations to be provided on printed statements.

3. Table of Conversion Factors - The Department asked if there would be substantial cost savings if it published (and periodically updated) a table of certain conversion factors based on the safe harbor assumptions. As noted earlier in this letter, we are concerned that having to refer to plan and participant-specific information, and outside tables and sources of information will complicate, not simplify, development and production of the illustrations.

4. Explanation About Estimates and Concerns About Lawsuits - The Department asked to what extent certain language in the Notice accomplishes disclosing and clarifying to participants that such lifetime income illustrations are only estimates, and minimizes the likelihood that they are taken as a promise or guarantee which could result in lawsuits. The Department also requested comments about whether the regulatory safe harbor being considered will help address concerns about potential lawsuits.

We appreciate the Department's efforts to address this issue. This is a significant concern for our member companies and plan sponsors. Both groups continue to fear that the illustrations might be misinterpreted by participants as either a promise of what their benefits might be or a guarantee of benefits. Although the proposed language in Section 2520-105-1(c)(6)(iii) of the Notice is helpful, participants are generally unlikely to read such notices and disclaimers. As a result, the language may only marginally reduce the incidence of participants viewing these projections as accrued benefits or guarantees. Therefore, we are concerned about the limited scope of the safe harbor and that the proposed language in the Notice will only serve to ensure compliance with the illustration requirements.

The approach being contemplated by the Department will not provide adequate protection for the plan, the plan sponsor, responsible plan fiduciaries or service providers from the increased risks of claims and lawsuits. Further, as discussed above, despite the Department's intentions, plan sponsors will remain concerned about their potential liability and may only be willing to provide information specifically covered by the safe harbor. This will stifle innovation, and may result in participants having fewer tools and less information available to them.

As discussed above, if the Department concludes that lifetime income illustrations are to be required, then a broad and flexible safe harbor will be needed. Our member companies are concerned that without such a safe harbor that covers income projection methodologies already in use by plan sponsors and service providers, the rules under consideration will potentially contribute to more lawsuits. It is conceivable that a participant could bring action against a plan sponsor or service provider for having previously furnished projections that do not conform to the Department's safe harbor methodology. Absent a broad safe harbor, to address this concern, plans and service providers, including financial advisers and investment managers, who are already providing retirement income projections under other reasonable approaches, should be accorded retroactive relief.

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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: The Honorable Phyllis C. Borzi, Assistant Secretary, U.S. Department of Labor
Mr. Alan Lebowitz, Deputy Asst. Secretary for Program Operations, U.S. Department of Labor
Mr. Joe Canary, Director, Office of Regulations and Interpretations, U.S. Department of Labor
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