The SPARK Institute, Inc.
SHAPING AMERICA'S RETIREMENT

February 14, 2022

Sent by email

Ali Khawar
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Pension Benefit Statements – Lifetime Income Illustrations (RIN 1210-AB20)

Dear Acting Assistant Secretary Khawar:

On behalf of The SPARK Institute, Inc., we write to express concerns about the timing of the final regulation relating to lifetime income illustrations (LIIs), which, according to the Department of Labor's (Department's) Fall 2021 Regulatory Agenda, is currently targeted for release in February 2022. As described in more detail below, while SPARK members have differing views about how the Department should proceed with this project, all of our members agree that, ***at this point, a final LII regulation making any changes to how the illustration is to be calculated or displayed could not be feasibly implemented prior to the interim final rule's (IFR's) deadline for furnishing LIIs and would impose unnecessary costs and burdens on plans and their service providers.***

The SPARK Institute recognizes that the delay in releasing a final LII regulation is the byproduct of the Department's careful approach to regulations and many competing priorities (including its efforts to help Americans get through the pandemic). This delay, however, threatens to create unnecessary disruptions and confusion for plan administration. This letter describes those issues and offers potential solutions for the Department's consideration. The SPARK Institute appreciates the Department's consideration of our views. We know that the Department shares our goal of making these disclosures as effective as possible.

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 100 million employer-sponsored plan participants. SPARK members produce the vast majority of defined contribution pension benefit statements which will contain the new LII.

Background. The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 required the Department to issue, within one year, an IFR prescribing the assumptions to be used by plan administrators in calculating the new LII. The Department published the IFR on September 18, 2020, and simultaneously requested comments. The IFR is effective for pension benefit statements furnished after September 18, 2021. The IFR stated that the "Department's intention is to adopt a final rule prior to the effective date after consideration of public comment, with an adoption date sufficiently in advance of the effective date in order to minimize compliance burdens." The SPARK Institute filed extensive comments offering our suggestions for improvements and clarifications, as did many others.

In July 2021, the Department issued "Temporary Implementing FAQs" on the LII. The FAQs confirmed the most common interpretation of the IFR's effective date, namely that plans can satisfy the IFR's effective date by incorporating their first LII into a benefit statement for any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022). With respect to next steps, the Department stated it "intends to issue a final rule as soon as practicable based on feedback from comments received" and that the Department "appreciate[s] the commenters' concerns about the burdens and challenges that could arise if the Department issues a final rule that differs materially from the IFR without sufficient transition time for plan administrators to accommodate any changes from the IFR."

SPARK Member Efforts. Without any further insight into the timing or content of the final rule, SPARK members have put in significant efforts to program for the new LII based on the IFR. All SPARK members reported to us that they will be ready to include the LII on the second quarter 2022 statement, as required.

That said, some plans serviced by SPARK members have already included the LII required by the IFR on a quarterly benefit statement. At least one large SPARK member is planning to include its first LII on the *first quarter* 2022 benefit statement, in order to get their client plans onto a yearly cycle that is not based on the second quarter of each year. Other SPARK members are planning to roll out the LII on the second quarter 2022 statement, unless a plan administrator requests otherwise.

It is important to note that rolling out the LII on quarterly benefit statements is a very challenging and expensive undertaking. Because they are customized and distributed to every single one of the millions of participants covered by defined contribution plans, producing benefit statements is among the most complex tasks of plan recordkeeping. Changes to these benefit statements take a long time to program and test. In addition, since many SPARK members have been producing LIIs that differ from the Department's mandated assumptions for years, SPARK members need to communicate and explain these changes to plan sponsors and participants.

Furthermore, SPARK members have implemented the new LII requirement for benefit statements at the same time they have been updating their systems to account for the elimination of the "continuous access method" described in Field Assistance Bulletin 2006-03, which officially expired on January 27, 2022. This means that, over the past 18 months, recordkeepers and plan administrators have had to devote significant time and money to reengineer both the benefit statement's content and how it is furnished to participants.

The Disruption a Final LII Regulation Could Cause. At this point, all SPARK members have already finished, or are putting the finishing touches on, the rollout of the LII required by the IFR. It is well past the date that any changes to the calculation in a final rule could be incorporated by the deadline imposed by the IFR's effective date. Even if it were technically feasible at this point to adjust the logic used for the calculation before the second quarter 2022 statements are produced, many participants have already received a benefit statement with the LII required by the IFR, or will soon, and plan administrators are expecting to rely on the limitation of liability of the SECURE Act and the IFR. Thus, the Department cannot meet its intention, expressed in the IFR back in September 2020, to release a final regulation "sufficiently in advance of the effective date in order to minimize compliance burdens." It is already too late to accomplish that.

We appreciate that the Department, both in the IFR and in the Temporary Implementing FAQs, acknowledged the "burdens and challenges" of a final regulation that differs materially from the IFR. But even if the final regulation states that plans are not *required* to make changes based on the final regulation until some future date, the very fact that the Department may be issuing rules that would result in a calculation that differs from the LII participants will soon receive could cause confusion, including regarding the availability of fiduciary liability protection.

Solutions for the Department to Consider. All SPARK members agree about the disruption that the release of a final regulation could cause. We would point out that the Department's delay in releasing the final rule has led us to believe that the Department is contemplating at least *some* changes to the IFR.

Our members have offered differing solutions to this problem:

> ***Announce a temporary delay in the effective date of the IFR***. Some members feel that, given that the final rule is imminent, the second quarter 2022 deadline for the first LII should be delayed, and that delay should be announced as soon as possible. These members pointed out that it is simply wasteful and confusing to produce the LII using the IFR and then immediately begin a new process to program and disclose a different calculation. Some SPARK member also would appreciate some additional time to test and communicate the new LIIs. However, all of the members pointed out that, even if the second quarter 2022 deadline is extended, *the fiduciary liability relief must be not be delayed.* Many plans have moved forward, or shortly will move forward, with an LII based on the IFR and the fiduciary liability relief provides critical protection.
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> ***Delay releasing the final rule, either indefinitely or for a significant period of time***. A number of SPARK members pointed out that they are ready to move forward with the LII based on the IFR, and at this point, a final rule simply does more harm than good. Some members suggested that a significant delay would allow stakeholders and the DOL to assess, based on actual participant responses and reaction to the first LII, whether the IFR is essentially "good enough" or if the changes DOL is planning based on comments to the IFR would materially improve the LII.

We offer the suggestion of a significant delay with some trepidation. This latter option would mean that the Department would not address the comments it received on the IFR. Our comment letter had what we felt were some very important suggestions for clarifications and improvements. It would be unfortunate if the passage of time has left the industry and the Department with no choice but to leave these important issues unaddressed, at least in the short term. (That said, most of the SPARK Institute's comments involved the need for important clarifications and simplifications but would not impact the core calculation itself.[1])

Grant continued reliance on the IFR-based LII. One SPARK member suggested a variation on the prior suggestion, which is that the Department could expressly permit the use of an IFR-based LII to satisfy the requirements of the SECURE Act safe harbor as an alternative to a LII based on the final regulation. Although the Department may make *some* changes to the LII in the final regulation in response to comments, the first LII received by participants may be the benchmark that they use to think about retirement readiness and chart their progress towards their retirement savings goals. Thus, changing the LII calculation methodology or model disclosures in future years may cause confusion for participants, and offering plans the option to continue relying on the IFR-based LII is another approach to addressing this issue.

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Although we feel it is important to provide these thoughts on the IFR and pending final regulation, we want to close by expressing our thanks for the work the Department has put into the IFR, the final rule, and on the issue of lifetime income disclosures generally. We would be pleased to meet with you to discuss this further, if such a meeting would be helpful. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP (mlhadley@davisharman.com).

Sincerely,

Tim Rouse
Executive Director

[1] Our comment letter noted that the SPARK Institute's members were split on whether or not the LII should provide for an earnings adjustment, which was the most significant issue addressed by most of the comments on the IFR.