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EXECUTIVE DIRECTOR

Filed Electronically

July 2, 2014

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, DC 20210

**Re: Target Date Disclosure (RIN 1210-AB38)**

The SPARK Institute<sup>1</sup> appreciates the opportunity to comment on the reopened comment period for the Department of Labor's proposed target date fund disclosure regulation. The SPARK Institute's members have a strong interest in the proposal because our members include the leading record keepers and investment fund managers. We support efforts to educate participants in effective ways about the investments available to them.

Two preliminary points at the outset: First, we strongly commend and applaud the Employee Benefits Security Administration ("EBSA") for working as closely as it has with the Securities and Exchange Commission ("SEC") on this project. The original proposal was clearly coordinated with SEC's similar proposal regarding marketing of target date mutual funds, and when SEC reopened its comment period in 2012, EBSA did the same. We appreciate that coordination of this kind can slow down regulatory action, but the end result will be better rules. EBSA and SEC are administering different laws, but they have the same purpose – giving Americans effective tools to save and invest for their future. This coordination is a model for future regulatory activity in areas of overlapping jurisdiction.

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<sup>1</sup> 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 employer-sponsored plan participants.

Second, we want to reiterate that we expressed a number of issues and concerns with, and recommend changes to, the 2010 proposal in our comment letter dated January 13, 2011.<sup>2</sup> Among other comments, we had significant concern about the coordination and timing of the participant disclosure and QDIA notices, both of which would be modified by the target date fund proposal. We incorporate by reference the comments in our 2011 letter.

At the heart of EBSA's and SEC's original proposal was a new requirement to include a chart, table or other graphical representation illustrating how a target date fund's asset allocation will change over time – known as the fund's "glide path." The comment period was recently reopened by EBSA to seek comments on the recommendation of SEC's Investor Advisory Committee ("IAC") that the SEC develop a glide path illustration that is based on "a standardized measure of fund risk." The IAC recommended that this either replace or supplement the proposed glide path requirement. We offer comments on this idea below.

**EBSA cannot finalize a regulation that incorporates this new idea without a reproposal.** The notion of a "standardized measure of fund risk" is not as simple as it sounds. Numerous comments filed with the SEC point out that there is no single standardized measure of risk and that each risk measure has tradeoffs.<sup>3</sup> In addition, retirement savers face many risks, and market risk is only one of them. Commenters have also pointed out that risk-based glide paths would be of marginal use given the necessary subjectivity and limitations of the potential measures of risk.

Neither EBSA nor SEC have proposed any particular risk standard or proposed how the risk standard will be explained to participants. The SEC's release simply asks a series of questions about the idea. It is not clear whether the proposal is to modify how the glide path is presented, or to include an additional subjective or objective number, or something else entirely. We cannot meaningfully comment without a specific proposal.

EBSA's proposed regulation covers more than just registered mutual funds. A target date investment used as a qualified default investment alternative can be a mutual fund, a collective trust, a separate account, or even a managed account service. Comments to the SEC from those who actually construct target date mutual funds suggest that a risk-based measure may be inappropriate for a number of reasons. But even if a risk measure might work for mutual funds,

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<sup>2</sup> A copy of the SPARK Institute's 2011 comment letter is available at <http://www.dol.gov/ebsa/pdf/1210-AB38-011.pdf>.

<sup>3</sup> See e.g., Letter from Barbara Novick, Vice Chairman, and Chip Castille, Managing Director, BlackRock, Inc. (June 9, 2014); Letter from Michael J. Downer, President, and James B. Lovelace, Senior Vice President, Capital Group (June 9, 2014); Letter from Scott Goebel, General Counsel, Fidelity Management & Research Co. (June 6, 2014); Letter from Dorothy Donohue, Acting General Counsel, Investment Company Institute (June 9, 2014); Letter from Joe Monk, Senior Vice President, State Farm Investment Management Corp (June 9, 2014); Letter from David Oestreicher *et al.*, T. Rowe Price Associates, Inc. (June 9, 2014); Letter from Chris D. McIsaac, Managing Director, Vanguard (June 9, 2014). Copies of comment letters filed with SEC are available here: <http://www.sec.gov/comments/s7-12-10/s71210.shtml>.

it may not work for other investment structures used in plans.<sup>4</sup> EBSA would need to propose a standard and seek comment on these issues.

**It is not appropriate to single out target date funds for a special risk-based disclosure or measure.** All variable return investments involve market risks. EBSA's participant disclosure rules require disclosure of historical return information and the principal risks of each variable return investment. We pointed out in our 2011 comment letter that the proposal singles out target date funds with a special warning that the target date fund may lose money and that there is no guarantee that it will provide adequate income—a statement true for all options with a variable rate of return.

A participant in a plan that offers a suite of target date funds is, in most cases, not choosing among different target funds offered in the market, because the typical plan will offer only one suite of target date funds. Rather, the participant is deciding whether to invest in the target date fund (sometimes by default election) or allocate the account among the other investments on the plan menu. A special risk-based disclosure or measure will not be helpful to the participant in making that decision and could serve to confuse the participant or, worse, unintentionally discourage the use of the target date fund.

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The SPARK Institute appreciates the opportunity to provide these comments to EBSA. Once again, we commend the Department of Labor for coordinating with SEC on this project, and for taking the time to get this rule right.

If you have any questions or need additional information regarding this submission, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP ([mlhadley@davis-harman.com](mailto:mlhadley@davis-harman.com), 202-347-2210).

Sincerely,

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<sup>4</sup> In our 2011 comment letter, for example, we pointed out that EBSA needs to modify or clarify the proposed disclosure requirements for investment management services. For example, these services do not have an "issuer" and will not have an expense ratio.