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Via Electronic Mail

August 6, 2007

Committee on Education and Labor
Committee on Ways and Means
U.S. House of Representatives

Re: **401(k) Fair Disclosure for Retirement Security Act (H.R. 3185)**

Dear Congressmen and Congresswomen:

Representative George Miller, recently introduced the 401(k) Fair Disclosure for Retirement Security Act of 2007 (the "Bill") requiring, among other things, fundamental changes in the manner in which fee disclosures are made by employers (i.e., plan sponsors) to employees (i.e., plan participants), and by plan service providers to plan sponsors. Although The SPARK Institute, Inc.[1] has publicly supported and promoted meaningful fee disclosure by employers, retirement plan service providers and investment providers, we are very concerned about the unnecessarily burdensome and costly approach taken by, and provisions in, the Bill, which will ultimately serve to weaken, not strengthen, the defined contribution system.

Our members are the service providers that will be required to facilitate the plan sponsor disclosures to plan participants, and will have to make the additional disclosures to the plan sponsors. Our members include most of the largest service providers in the retirement plan industry and our combined membership services more than 95% of all defined contribution plan participants. We are concerned that the Bill will discourage the formation of new retirement plans, discourage employee participation and savings, significantly increase retirement plan costs, and will create fertile ground for frivolous lawsuits brought by plaintiffs' lawyers primarily

[1] We represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, insurance companies, third party administrators and benefits consultants.

seeking settlements from plan sponsors with perceived deep pockets and service providers concerned about their public reputations.

Attached is a summary of some of our concerns regarding certain requirements in the Bill. We urge Congress and regulators to take deliberate and measured steps in attempting to resolve these extremely complex issues. The complexities of the issues are driven by certain realities of the defined contribution system, including for example, the diversity of investment products and structures, the diversity of service provider business models and structures, the general passivity and disinterest among the vast majority of plan participants to receive and absorb complex financial information, and the costs associated with providing more information. Further, the vast majority of the proposed disclosures will not be helpful in participant decision making.

Regulators, such as the Department of Labor and the Securities and Exchange Commission, who we believe have a comprehensive understanding of the defined contribution system and financial services industry, should be permitted to complete their current initiatives that are intended to address and resolve the perceived disclosure issues. If regulators believe that additional laws are needed in order to facilitate resolving such concerns, then Congress should adopt legislation that fills the "gaps" that such regulators identify. Our member are in agreement with Congress in the belief that any disclosure rules or regulations ultimately adopted must meet the goal of creating a stronger defined contribution system for plan participants rather than one weakened by complex and costly disclosure rules that fail to serve participants' interests.

We thank you for your consideration of our views. If you have any questions regarding this information, please do not hesitate to contact us at (704) 987-0533.

Respectfully,

/s/

Larry H. Goldbrum
General Counsel

Enclosure

cc: The General Accountability Office
The Department of Labor
The Securities and Exchange Commission

Summary of Concerns Regarding the
401(k) Fair Disclosure for Retirement Security Act (H.R. 3185)

Generally, the 401(k) Fair Disclosure for Retirement Security Act (the "Bill") requires (1) extensive and complex investment options and fees disclosures that plan sponsors must provide to participants annually, (2) a complicated annual participant account statement, (3) extensive and complex fees and potential conflict of interest disclosures that plan service providers must provide to plan sponsors at least annually, and (4) all plan sponsors to include an index fund as an investment option in their plans.

A. Plan Sponsor Disclosures to Plan Participants - These requirements mandate the disclosure of so much information that the vast majority of participants will not read. Instead of enlightening participants, the information will overwhelm and confuse those who bother to look at it. Many of the financial concepts required to be disclosed cannot be explained in simple language that most participants will understand. In order to preclude potential claims by plaintiffs' lawyers that such disclosures were insufficient or were not understandable, these disclosures will become lengthy and detailed with technical disclosures rendering them virtually useless to participants. The costs of producing and maintaining these materials will ultimately be borne by participants for little or no perceived benefit because the vast majority of participants will ignore the forms and will not be motivated to save more and invest wiser.

Additionally, these requirements (1) do not adequately take into account that not all plan investments are mutual funds, (2) create awkward and confusing new categories for disclosing fees, and (3) require disclosure of certain potential conflicts of interest information that is irrelevant to the decisions participants have to make. The Bill also requires that the DOL create a model notice that is virtually an impossible task given the multitude of service providers, investment providers and the differences among their products and fee structures.

B. Annual Participant Account Statement - These provisions are, in many respects, extremely complex, and in certain other respects, duplicative to existing quarterly participant statement requirements. Most plan record keeping systems are not designed to produce a single cumulative annual statement. Additionally, most systems are not currently able to gather, calculate and present the detailed fee information required under the Bill. Most of the information related to the fees of the underlying investments is embedded within the underlying investment funds. In the case of mutual funds, the information that plan sponsors would have to provide is simply not on the record keeping systems because such information by its very nature is embedded in the investment fund. Redesigning record keeping systems to produce the statements and complying with these requirements on an ongoing basis will be time consuming and expensive. Concerns among plan sponsors and service providers about potential litigation will cause the statement content to expand with complexity, ultimately rendering them useless to participants. As noted above in Section A, the cost of producing these statements will be borne by plan participants for little or no benefit.

C. Service Provider Disclosures - These provisions obligate plan service providers to disclose proprietary information, such as the identity of their suppliers and the financial terms of their arrangements, in such a way that the information will become publicly known and available to their competitors. As written, several of these provisions are also susceptible to confusion, misinterpretation, and will not likely accomplish what we presume to be their objectives. For example, although the provisions require certain disclosures be made before a plan enters into a contract with service provides, such provisions do not take into account the fact that generally neither the plan nor the plan sponsor enters into agreements with investment providers, such as the mutual fund companies whose funds are used as investment options.

Another example is that the Bill requires service providers to disclose certain information about retail classes of shares of any mutual fund used by a plan, presumably to let plan sponsors know that there may be other, potentially less expensive share classes available. However, the specificity of the provision causes it to miss its objective. Many funds offer multiple non-retail classes of shares (e.g., trust and institutional shares) that may be available to retirement plans and which are cheaper than retail shares. We also note that the focus of the proposal on retail shares suggests that it may be based on an incorrect assumption that the expense ratios of retail shares classes are generally lower than the expense ratios of share classes used by retirement plans.

A third example is that the Bill requires service providers to make certain disclosures about how they are paid when they offer discounts or provide services without a charge. The purpose of these requirements is presumably to facilitate the identification of potential conflicts of interest. However, virtually every deal would be subject to this requirement because the vast majority of plan service providers discount their fees relative to their published fee schedules because of fierce market competition. Although we agree with the idea of disclosing information about potential conflicts, we are concerned that the provisions are too broad, and duplicative with other provisions of the Bill.

Additionally, we are very concerned that the Bill creates rigid minimum disclosure requirements instead of establishing a conceptual framework that (1) allows service providers flexibility to customize disclosures for their products and services, and (2) authorizes the use of simple rate disclosures instead of plan specific dollar disclosures or estimates. Dollar disclosures and estimates of certain fees are driven by many factors beyond the control of the service provider, such as financial market fluctuation and participant decisions.

Finally, as noted above, we are concerned that the confidential and proprietary information required to be disclosed under these provisions will become readily available to plaintiffs' lawyers. This will serve as fertile ground for frivolous and costly lawsuits brought by such lawyers primarily seeking settlements from plan sponsors and service providers who are perceived to have deep pockets and who are concerned about their public reputations.

D. Index Fund Mandate - We presume that the objective of this provision is to make "low cost" investment options available to plan participants. However, we are concerned about the potential misconception that requiring such options to be added will either change participant behavior the economics of servicing a plan. Regardless of which funds are used in any plan, plan service providers must have a source of revenue to get paid. Plan sponsors and service providers can agree to fee arrangements that impose additional charges paid by participant assets invested in such funds in order to maintain the current revenue and economics of the plan.

Additionally, we are concerned that the qualitative requirements regarding the selection of an index fund are too subjective. Reasonable investment experts are likely to disagree on which funds satisfy such requirements. The subjective nature of the requirements makes them untenable. Plan sponsors should not be required to select a fund based on such criteria. Moreover, although many of our members offer index funds and encourage their use when appropriate, such funds should not be given a Congressional "seal of approval" as an investment option. Instead, market forces and the suitability of such funds for use in plans should be allowed to drive plan sponsor decisions.