



Submitted Electronically

January 6, 2012

Mr. Michael L. Davis
Deputy Assistant Secretary of Labor
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Delayed Release of Final 408(b)(2) Regulations**

Dear Mr. Davis:

I am writing to follow-up on my December 14, 2011 letter to you and our conversations regarding the impact of the delayed release of the final 408(b)(2) regulations. In the December letter, I indicated that record keepers were already prepared and able to comply with the interim final 408(b)(2) regulations by the April 1, 2012 compliance deadline if the final regulation was released by January 1, 2012 and there were no changes from the interim final regulations that required changes to systems, processes, procedures, documents or communications.

Since the final regulations have not yet been released, the vast majority of record keepers have indicated that they will not be able to comply with the regulations by April 1, 2012. Even if the final regulations are unchanged from the interim final regulations, record keepers no longer have enough time to complete planned communications and distribute the required disclosures to their customers. Record keepers have been put in the unreasonable position of not knowing whether they should proceed with their compliance approach based on the interim final regulations or wait for the final regulations which are widely believed to include changes. Record keepers have already devoted substantial time and resources to making required changes and are very concerned about the impact on their planning processes and scheduled deliverables resulting from the delays, the costs of making additional changes to adapt to the final regulations and the wasted money spent on potential throw-away work, assuming more changes are required. Companies that have acted diligently and in good faith to comply with the new regulations are now faced with the prospect of expending additional resources and still not being able to

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comply with the regulations by the April 1, 2012 deadline. The current situation is creating substantial frustration in the regulated community and putting service providers in very awkward positions with their customers, who are anxious about their obligations regarding the new disclosure rules and the materials they will receive.

The SPARK Institute urges the Department to take the following very important steps quickly in order to address our concerns and provide the regulated community with critical information about the final regulations.

Postpone the April 1, 2012 Compliance Deadline – The vast majority of record keepers will not be able to comply with the final regulations by April 1, 2012 and must have more time to do so starting from the time the final regulations are released. Assuming that the final regulations will include some changes or new requirements, the length of the extension should be consistent with the following recommendations from our December letter.

General and flexible road map requirement or other basic and simple changes - Six to 12 months based on the nature of the changes. The majority of record keepers estimate that they may require 12 months.

Specific and detailed roadmap requirement (e.g., requiring cross reference to pages or sections embedded in other documents) or other significant or complicated changes - Eighteen to 24 months or more depending on the specificity of the roadmap requirement, assuming it is practical or even possible to implement.

Determining whether certain changes are basic and simple or significant and complex and their implications for record keepers' systems, processes, procedures, documents or communications can be difficult. Although, as we noted in the December letter, record keepers' views on what is simple or complex may vary based on a number of factors, record keepers are in the best position to determine the complexity of any changes and estimate the time needed to adapt. Assuming that there are changes in the final regulations, The SPARK Institute is willing and able to work with the Department to evaluate their complexity and provide an estimate of time needed to make required changes.

If, however, the final regulations are identical to the interim final regulations, record keepers still need the current compliance deadline to be postponed in order to have enough time to communicate with and distribute disclosures to all of their customers. In that case, the deadline should be at least four months following the date on which the final regulations are released. We urge the Department to tie all compliance deadlines that are announced to the date on which the final regulations are released so that the regulated community is not faced with the current situation again. Additionally, we urge the Department to maintain the linkage between the compliance deadlines for the 408(b)(2) and 404a-5 regulations.

Publicly Announce Plans to Change the Compliance Deadline – Record keepers need to know that the Department plans to postpone the current compliance date even if the Department has not determined how long it is willing to postpone the deadline or is not yet able to publicly announce a new deadline. As noted above, record keepers have acted diligently in good faith and are now in a very untenable position that can be alleviated by the Department.

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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