



Submitted Electronically

August 2, 2011

Mr. J. Mark Iwry, Deputy Assistant Secretary
Mr. George H. Bostick, Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: **Guaranteed Lifetime Withdrawal Benefits in Defined Contribution Plans**

Dear Mr. Iwry and Mr. Bostick:

The SPARK Institute¹ appreciates this opportunity to share its views on certain issues currently being reviewed by U.S. Department of the Treasury (the “Treasury”) regarding the use of guaranteed lifetime withdrawal benefits (“GLWBs”) in defined contribution plans. It is our understanding that Treasury officials have asked whether a GLWB is part of an employee’s account balance within the meaning of Section 411(a)(7) of the Internal Revenue Code (the “Code”) and, if so, whether a discontinuance or adjustment in GLWB coverage (such as upon the participant taking an excess withdrawal, including reallocating to another investment option within the plan) can result in an impermissible forfeiture under Code Section 411(a). Additionally, Treasury is considering whether an employer’s decision to discontinue a GLWB option under a plan can result in an impermissible cutback of an employee’s accrued benefit under Code Section 411(d)(6).

At the outset, we note that we agree with and support the technical analysis of these issues that was provided to the Treasury by Davis & Harman on behalf of the Committee of Annuity Insurers (“CAI”) in their letter dated July 14, 2011. In addition to stating our

¹ 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. Members include most of the largest firms that provide record keeping services to employer-sponsored retirement plans, ranging from one-participant programs to plans that cover tens of thousands of employees. The combined membership services approximately 70 million employer-sponsored plan participants.

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support of the CAI analysis, the purpose this letter is to provide a summary of the efforts undertaken by the retirement plan community to ensure that GLWBs are used appropriately and that participants that invest in GLWBs are able to enjoy the benefits and the retirement security that they can provide.

A. The SPARK Institute Data Layouts for Retirement Income Solutions – On September 30, 2010, The SPARK Institute issued its "Data Layouts for Retirement Income Solutions"² in order to establish industry standards and expectations among retirement income product providers and record keepers who decide to offer GLWBs and retirement income products in retirement plans. Specifically, the Data Layouts facilitate:

1. Maintaining one or more retirement income products on the record keeping system of an independent customer-facing record keeper.
2. Efficient information technology design and development by retirement income product providers and record keepers that will be engaged in data sharing for product administration.
3. Portability of products when the plan sponsor changes plan record keepers (“record keeper portability”).
4. Portability of guaranteed income when a participant has a distributable event – in the form of a rollover to a Rollover IRA or as a qualified plan-distributed annuity (“participant portability”).

The Data Layouts have become the accepted retirement industry standard. A survey of our members, which include the vast majority of industry leading lifetime income product providers and record keepers, indicated that 85% of them are developing or have developed the capabilities to utilize the Data Layouts.

B. Portability – As noted above, The SPARK Institute Data Layouts facilitate greater portability when a plan changes record keepers and when a participant has a distributable event. This adds important protection for participants who want to keep their GLWB benefits when changes occur. The Data Layouts and collaboration among industry leaders helped to overcome the problem of participants having no effective way to keep their GLWB benefits in their plan when the plan changed record keepers. Previously, the annuity contract containing the GLWB was often surrendered when the plan changed record keepers.

² The Data Layouts are available to anyone at no charge and can be downloaded at <http://www.sparkinstitute.org/comments-and-materials.php>.

The Data Layouts also facilitate participant portability. Most GLWB product providers offer parallel IRA products that can be used when a participant wants to rollover their assets without losing the benefit base built up in the plan's GLWB benefit, provided that there is a distributable event. By having parallel IRAs, the participant has the option to preserve the benefit base they accumulated in the qualified plan and transfer that preserved benefit base to an IRA product with the same or similar benefit.

Certain plan changes that can affect a participant's GLWB benefits are not considered distributable events under current law and an IRA is not a viable option to preserve the GLWB benefit. Several firms and industry groups have advocated for the ability to take an eligible rollover distribution and roll it to an IRA to preserve the GLWB benefit instead of surrendering it when an employer changes or terminates a lifetime income product provider from a plan. If a distributable event was deemed to occur and a rollover permitted in that situation, the forfeitability issue would effectively be solved because participants would have an effective way to preserve their GLWB benefit through a rollover. Absent a change in current law, the Data Layouts provide the ability for the plan, the record keeper and the displaced GLWB product provider to agree to continue to maintain a participant's GLWB benefit in the plan in a "frozen" status or to continue to accept contributions from participants who already invested in the product.

- C. Account Rebalancing and Investment Transfers – Record keepers are designing systems and adopting procedures to help participants avoid "inadvertent" excess withdrawals or surrenders when they rebalance their accounts and make investment transfers within the plan. For example, some record keeping systems are being designed to require a participant to talk to a call center representative if the participant attempts to transfer or rebalance their account in such a way that would cause a transfer out of the GLWB and create an excess withdrawal. Similarly, record keeping systems are being designed to allow participants to rebalance their accounts and limit their ability to rebalance the fund(s) that are associated with the GLWB in order to help prevent an excess withdrawal.
- D. Plan Loans and Withdrawals – Plan design techniques and procedures are available and being used to limit the reduction of the benefit base by prioritizing the order in which funds are taken from a participant's account when the participant takes a loan or a withdrawal. In order to avoid a reduction in the benefit base, the fund(s) associated with the GLWB benefit are accessed last.
- E. Record Keeping Fees and Insurance Costs – Recordkeeping fees and insurance costs are generally not considered an excess withdrawal that reduces the benefit base. If a GLWB product provider is instructed to deduct a fee from a participant's account, the fee will generally not reduce the benefit base.

In addition to the efforts described above, GLWB product providers and record keepers are also educating plan sponsors and participants about the potential for, and impact of, excess withdrawals and surrender of contracts. The education and information, together with enhanced portability, record keeping system safeguards and the other procedures summarized above, help ensure that participants will receive the benefits of GLWBs that they invest in. GLWB product providers and record keepers will continue to innovate and respond to the needs of plan sponsors and participants to ensure that GLWBs and other lifetime income products and services are available to plan participants.

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Thank you for considering our views 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