



Submitted Electronically

January 20, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Fiduciary Definition Hearing - Request to Testify**

Ladies and Gentlemen:

The SPARK Institute, Inc.¹ respectfully requests the opportunity to testify before the Employee Benefits Security Administration's ("EBSA") hearings on the proposed definition of fiduciary regulation (the "Proposal"). The combined expertise of our members, who include the largest retirement plan service and investment providers, will allow us to provide valuable, unique and insightful testimony.

We respectfully request the opportunity to testify about our concerns and suggestions regarding the following:

(1) The implications of the Proposal for service providers, including:

- a. Our general concerns that the threshold for when a service provider will be considered a fiduciary would be substantially lower, and in many instances, significantly unclear. As a result, service providers will be at substantially increased risk of unintentionally and

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.

SHAPING AMERICA'S RETIREMENT

714 HOPMEADOW ST., SUITE 3 • SIMSBURY, CT. 06070

unwillingly becoming fiduciaries and engaging in inadvertent prohibited transactions. We will also discuss our recommendations for modifications or a safe harbor under any final rule.

- b. Our concerns regarding the impact on service provider investment platforms that include substantial proprietary and non-proprietary funds as investment options. More specifically, we are concerned about platform providers' ability to continue to offer broad investment choices and to be able to provide non-fiduciary guidance, education, and tools to assist plan fiduciaries narrow down their choices, and to respond to questions in RFPs about fund choices, among other concerns.
- c. The approach and scope of the "seller's exception" under the Proposal.
- d. The implications for service providers of providing certain asset values on participant statements.

(2) EBSA's request for comments regarding distribution counseling.

The SPARK Institute appreciates EBSA's consideration of this request and we look forward to the opportunity to testify at the hearings. If you have any questions or need additional information regarding this request, please feel free to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum
General Counsel