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January 14, 2011

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 Amendments

The Investment Company Institute[1] appreciates the opportunity to provide its views on the Department of Labor's recent proposal to add additional information to the disclosure participants receive about target retirement date funds used on plan investment menus and as default investments under the Department's qualified default investment alternative regulation. The Institute and its members, who serve retirement savers in 47 million U.S. households,[2] share the Department's goal of protecting the interests of target retirement date fund investors and enhancing their understanding of these useful investment products.[3]

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of the ICI manage total assets of $12.31 trillion and serve over 90 million shareholders.

[2] In May 2010, 46.9 million mutual fund–owning households held mutual funds through employer-sponsored defined contribution plan accounts, individual retirement accounts (IRAs), or variable annuities. *See* Bogdan, Sabelhaus, and Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2010," *Investment Company Institute Fundamentals*, vol. 16, no. 6 (Sept. 2010), available at www.ici.org/pdf/fm-v19n6.pdf.

[3] *See Statement of Karrie McMillan, General Counsel, Investment Company Institute, at the Target Date Fund Joint Hearing Before the Department of Labor and Securities and Exchange Commission*, (June 18, 2009) ("Institute Testimony"), available at www.ici.org/trdf/testimony/091_target_fund_tmny; *Submission of the Investment Company Institute on Target*

The Department proposed to amend its participant disclosure and QDIA regulations to require that participants receive information about a target date fund's asset allocation over time, the significance of the target date and the risk the product may entail. The new disclosure would apply to all target date funds and arrangements (whether organized as mutual funds or other investments) and require the information to be furnished both to defaulted participants and participants who give investment directions.

We strongly support the Department's approach. In discussing the proposal below, we suggest two ways in which the Department may want to clarify the requirements to avoid having them misunderstood. In addition, we respond to the Department's questions on whether it should require additional consistency between the information required in a QDIA notice and that required under the participant disclosure regulation.

While the proposal does not alter the Department's rules on electronic delivery, the Department stated in the preamble that it would soon begin to review its electronic disclosure rules in a separate proceeding. We strongly support modernizing the electronic delivery rules and urge the Department to move forward with that review.

I. Target Date Disclosure Elements

Asset Allocation Disclosure

The proposed amendments appropriately would require that participants receive an explanation of the target date investment's asset allocation and how it would change over time and an illustrative chart, table or other graphical presentation.

A key feature of any target date investment is the asset allocation path (or glide path) that the target date investment follows until it reaches its final asset allocation, which may be at or after the target date. We are pleased the Department would require that the disclosure include a glide path illustration. A graphical illustration effectively will alert the investor to the existence of the glide path and communicate at a glance that the asset allocation of the target date investment changes over time (including near, and often after, the target date) until reaching the final asset allocation.

Retirement Date Funds, (July 20, 2009) (supplementing the Institute Testimony), available at www.ici.org/trdf/testimony/09_target_fund_supp_tmny.

Institute research shows that mutual fund shareholders – 63 percent of whom are defined contribution plan investors[4] – prefer graphics and charts to narrative descriptions.[5] More than two-thirds of recent fund investors said financial documents that use graphics and charts to describe investments were more helpful than financial documents that have narrative descriptions of investments. The preference for graphics and charts is especially strong among shareholders who generally do not read, or read very little, of the prospectuses they receive. Among this group, nearly three-quarters said financial documents that use graphics and charts were more helpful than those that have narrative descriptions of investments. An earlier Institute study that focused on shareholders' assessment of risk disclosure methods also found that shareholders prefer graphic presentations to describe investments.[6] In that study, shareholders selected a graphic presentation as the method they most preferred for portraying a fund's level of risk. Shareholders indicated that a graphic presentation simplified risk disclosure, was something they could use without further study, and provided the right amount of technical information.

The proposed amendments also appropriately set out the asset allocation elements that must be conveyed in the explanation and illustration without specifying a particular format. Rather, the amendments would require that the glide path presentation not "obscure or impede" a participant's understanding of the target date investment. We believe this approach strikes the right balance and will allow target date investments flexibility to develop effective disclosure. Nonetheless, the Department has not used this "obscure and impede" standard before but rather has required that disclosure be written in a manner calculated to be understood by the average plan participant.[7] The Department should explain in the preamble to the final regulation what, if any, important differences it sees in the two standards.

Disclosure of the Significance of a Target Date

The proposed amendments also require that if an investment is named or described with reference to a particular date (*e.g.*, target date), the disclosure must include an explanation of the age group for whom the target date investment is designed, the relevance of the date, and any assumptions

[4] In May 2010, 51.6 million U.S. households owned mutual funds, and 32.7 million households owning mutual funds held mutual funds through defined contribution plan accounts. *See* Bogdan, Sabelhaus, and Schrass, *supra* note 2.

[5] *See Understanding Investor Preferences for Mutual Fund Information*, Investment Company Institute (2006), available at www.ici.org/pdf/rpt_06_inv_prefs_full.pdf.

[6] *See Shareholder Assessment of Risk Disclosure Methods*, Investment Company Institute (Spring 1996), available at www.ici.org/pdf/rpt_riskdiscl.pdf.

[7] *See* 29 C.F.R. § 2550.404c-5(d); 29 C.F.R. § 2550.404a-5(e)(5).

about a participant's contribution and withdrawal intentions on or after this date. Many target date mutual funds include this information now. For example, most target date funds are designed for investors who expect to retire and stop making contributions at or around the target date. With respect to withdrawals, some funds may be designed for an investor who plans to withdraw the value of the investor's account gradually after retirement. Others may be designed for an investor who expects to spend all or most of his or her money at the target date. Requiring target date investments to disclose this information will help enhance understanding of these investments.

To avoid any confusion, however, we recommend that the Department make clear that the reference to "any assumptions" does not require quantitative disclosures about contribution or withdrawal levels. That is, the fund need not state, for example, that it is designed for workers contributing six percent of pay to the fund or for workers that expect at retirement to withdraw five percent of the assets during the first year. Rather, it would be sufficient to state that the target date fund expects that a participant would cease making contributions on or around the target date or that the fund is designed for an investor who expects to withdraw the retirement amounts gradually in retirement.

Any assumptions about a participant's contribution and withdrawal levels that must be disclosed under this rule should relate to the design of the glide path. One assumption that is not relevant to the glide path is whether or not a participant plans to roll the investment into an IRA upon retirement. The assumption about how the participant will use the accumulated assets in retirement is relevant to the glide path. In what legal form the plan participant chooses to keep the assets – in an IRA or in a qualified plan – is *not*.

II. Making Participant Disclosure and QDIA Notice Information Requirements Consistent

The preamble to the proposed amendments states that the Department seeks to ensure that defaulted participants and participants that provide investment instructions receive the same three items of information about target date investments. We support this approach. The Department asks for comment on the extent to which the new requirements it proposes for QDIA notices should conform to the Department's new participant disclosure regulation.

Not all the changes the Department proposes to the QDIA notice conform with the way information must be disclosed in the participant disclosure regulation. Under the proposal, the QDIA notice itself would include a description of the investment's issuer, objectives or goals, principal strategies and principal risks, performance data and fees and expenses. The participant disclosure regulation sets outs different rules for delivering this information. Participants will receive fee and expenses and performance information in the chart and the chart will refer participants to a web site to obtain information on the investment's objectives or goals, principal strategies and principal risks. We

recommend that the Department re-examine this discrepancy between the QDIA notice and the participant disclosure rules.

The different approaches taken in the two regulations may be problematic. For example, the QDIA notice requires that participants receive information about the principal risks of a default investment (including information on the risk of loss at or near retirement). The participant disclosure regulation will tell participants, in an appendix to the required chart, that investors in target date funds bear a risk of loss at or near retirement; it will refer participants to a web site for information about the principal risks associated with other plan investments and about any other principal risks associated with target date funds. This bifurcation may suggest that only target date fund investors bear a risk of losing money at or near retirement when clearly that is not the case. Most 401(k) plan investment values fluctuate with stock and bond market developments and thus are subject to that same risk. Moreover, by highlighting a single risk on the chart appendix, the Department's rules may suggest the risk of loss of market value near retirement is the only or most important risk 401(k) participants face and minimize their understanding of any important risks associated with other available investments, including the risk of non-diversification. Finally, seeing target date funds described differently in QDIA notices and plan enrollment and investment materials simply may be confusing to participants. It would seem that the best way to address these potential problems would be to require delivery of the information that DOL determines to be key information to *all* participants about *all* investments.

In addition, the Department also proposed to require plans to provide defaulted participants with other specified information they must furnish to all participants under the participant disclosure regulation (*e.g.*, materials provided to the plan about the exercise of voting rights). The new language would replace the current requirement in the QDIA rule that plans must provide defaulted participants with certain information under Section 404(c) of ERISA. We agree that the reference to section 404(c) is no longer necessary. The new language in the QDIA rule, however, also is not necessary because the participant disclosure regulation already requires plans to provide this information to all participants, including defaulted participants.

We also recommend that the Department allow plans and providers flexibility to develop the most effective disclosure documents, including combining the content of the QDIA notice with the material required under the participant disclosure regulation. Under the existing QDIA rule, plans generally must provide the QDIA notice separately to reduce the likelihood that participants will ignore it.[8] The Department, however, allows plans to combine the QDIA notice with two notices required by the Internal Revenue Code, because those notices are sufficiently related to the information

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[8] *See* 72 Fed. Reg. 60452, 60454 (Oct. 24, 2007), available at http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=13321.

required to be disclosed in the QDIA notice.[9] Because the key information about target date funds in the QDIA notice and participant disclosure regulation likewise are closely related, the Department should allow the documents to be combined. At a minimum, we urge the Department to confirm that the QDIA regulation allows plans to distribute the QDIA notice simultaneously with the participant disclosure materials.

III. Effective Date

The proposed effective date of the amendments to the QDIA and participant disclosure rules is 90 days after publication of final rules in the Federal Register. We agree that the effective date for adding new target date disclosure under both the QDIA and participant disclosure regulations should be the same. Because plans must provide the target date disclosure in an appendix to the new participant disclosure, we recommend that the effective date for the target date amendments not be earlier than the date by which plans must comply with the participant disclosure regulation.[10] In adopting any final rules under this proposal, the Department should consider whether 90 days are sufficient for plans to develop and update any new target date disclosures that plans must provide to *all* participants.

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Please feel free to contact the undersigned at 202.326.5826 (podesta@ici.org) or Anna Driggs at 202.218.3573 (adriggs@ici.org) with any questions.

Sincerely,

/s/ Mary S. Podesta

Mary S. Podesta
Senior Counsel – Pension Regulation

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[9] The QDIA notice can be combined with a notice required by Code sections 401(k)(13)(E) and 414(w)(4) (explanations of automatic contribution arrangements) and Code section 401(k)(12)(D) (explanation of a safe harbor contribution).

[10] The date by which plans must comply with the participant disclosure regulation is plan years beginning on or after November 1, 2011.