
January 11, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Target Date Disclosure

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we are writing this letter in response to request for comments on the proposed regulation, Target Date Disclosure, issued by the Department of Labor ("DOL") on November 30, 2010.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. The Chamber is particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

In response to concerns that participants and plan sponsors were not receiving enough information about target date funds, the DOL and the Securities and Exchange Commission ("SEC") have been working together to ensure that there are appropriate disclosures. We appreciate the efforts of the agencies and believe that additional information could be beneficial to both participants and beneficiaries. At the same time, we want to ensure that the information is useful to participants and does not unduly burden plan administrators. Our comments below focus on these issues.

## Comments

**The Final Rule Should Coordinate with the SEC Rules for Target Date Fund Disclosures**. In June, the SEC issued a proposed rule on Target Date Retirement Fund Names

and Marketing.[1] The SEC proposal is similar to the DOL's proposed rule but differs in certain details. Rather than requiring plan sponsors to meet two different but similar requirements for disclosure, we recommend that the final rule allow for coordination with the SEC rule.

If a plan sponsor receives the SEC required information from a service provider, the plan sponsor should be able to pass that information onto participants without having to worry about whether it also satisfies the DOL requirements for disclosure. Our review of the SEC proposal and the DOL proposal indicates that the SEC proposal contains more detailed requirements. For example both proposals require the inclusion of a graphic to illustrate the change in asset allocation over time. The SEC proposal, however, requires more detail in this graphic than the DOL proposal.[2] If there is no coordination between the rules, a plan sponsor will have to determine whether the SEC-compliant service provider document meets the DOL's requirements. To avoid this, the final DOL rule should state that service provider disclosures intended to meet the SEC requirements will also meet the DOL requirements.

**The DOL Requirements for Target Date Funds Should Conform as Closely as Possible to the Participant Disclosure Regulation**. We believe that plans sponsors and participants would benefit from having Target Date Fund disclosures conform as closely as possible to other analogous participant disclosures. Similar to the reasoning in the paragraph above, we believe that the greater conformity there is between disclosure requirements, the less confusion and burdens there will be on plan sponsors.

For example, we are concerned about the requirement to include a statement that an investment in a target date fund may lose money because this statement is not required for other investment disclosures.[3] Singling out target date funds for this notice can deliver two messages to participants and beneficiaries – that target date funds are more risky than other investment alternatives and/or that other investment alternatives do not have any risk of losing money. Therefore, we believe this DOL should address this inconsistency.

**We Urge the Department of Labor to Be Aware of the Possibility of Overwhelming Participants with Information and Notices**. As you are aware, plan sponsors are required to provide various notices to plan participants. Our members are increasingly concerned about the volume of required notices and whether participants are becoming overwhelmed with the volume of information being provided.

Plan sponsors are faced with two increasingly conflicting goals—providing information required under ERISA and providing clear and streamlined information. In addition to required notices, plan sponsors want to provide information that is pertinent to the individual plan and provides greater transparency. However, this is difficult with the amount of required disclosures that currently exists. As noted by the Third Circuit, too many requirements could "result in an

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[1] 75 Fed.Reg. 35,920 (June 23, 2010).

[2] The SEC proposal specifically requires that fund marketing materials include the fund's asset allocation at the inception of the fund, on the target date, and at the landing point. The SEC proposal also provides that specific dates generally must be used to show the asset allocation over time (as opposed to referencing the number of years before a participant's retirement date), and that intervals of no longer than five years may be used for this purpose.

[3] 75 Fed. Reg. 73,994 (Nov. 30, 2010).

avalanche of notices and disclosures. . . [T]ruly material information could easily be missed if the flow of information was too great. [A] warning . . . would become meaningless if cried too often."[4]

While the information in this proposal alone might not overwhelm participants, we are concerned that the amount of notices and information in the aggregate could be overwhelming. The DOL estimates that the disclosure in the proposed rule would add two pages to the QDIA notice.[5]These additional pages double the length of the notice as estimated in the final QDIA regulations issued in 2007.[6] This is in addition to all of the other notices that participants will receive. Consequently, we urge the DOL to take a comprehensive look at the benefit notices that are required. We are increasingly concerned about the amount of information required to be given to participants. At some point, participants will become overwhelmed thereby nullifying any intended benefit of the notices. The Chamber is more than willing to assist in such an important endeavor in any way possible.

## Conclusion

We believe that disclosure of useful information is important to the retirement security of plan participants. As such, we appreciate your consideration of these comments and stand ready to assist you as needed. Please do not hesitate to contact us if you have any questions.

Sincerely,

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[4] Fischer v. Philadelphia Elec. Co., 96 F.3d 1533, 1539 (3d Cir. 1996).
[5] 75 Fed.Reg. 73,992 (Nov. 30, 2010).
[6] 72 Fed.Reg. 60,468 (Oct. 24, 2007).