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

**Attn: Target Date Amendments**

Ladies and Gentlemen:

Financial Engines, Inc. (“Financial Engines”) appreciates the opportunity to provide comments on the U.S. Department of Labor’s (“Department”) Proposed Regulation on “Target Date Disclosure,” 75 Fed. Reg. 73987 (Nov. 30, 2010) (“Proposal”).

Financial Engines is a leading independent investment advisor committed to making high-quality independent investment advice available to everyone, regardless of wealth or investment experience. We work with many of the nation’s largest employers and retirement plan providers. As a result, over one million people have used Financial Engines’ “Online Advice” service or have their retirement accounts professionally managed by Financial Engines. Financial Engines offers a managed account program (designed to qualify as a “qualified default investment alternative” or “QDIA”) under which Financial Engines allocates individual participant accounts among the investment alternatives otherwise available under a plan to provide an asset mix that, among other factors, takes into account an individual’s age or target retirement date.

Financial Engines supports the Department’s initiatives on fee transparency and applauds the Department’s efforts in ensuring every participant in participant-directed retirement plans (“Plans”) receives important information regarding his or her investment options.

However, we have two concerns regarding the Proposal, which we discuss in more detail below. First, we are concerned that the proposed amendments applicable to all QDIAs, as defined in the Department’s regulation on QDIAs (“QDIA Regulation”),<sup>1</sup> were developed with a view to mutual funds and other commingled investment vehicles and do not take into account the characteristics of investment management *services* such

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<sup>1</sup> 29 CFR § 2550.404c-5.

as managed accounts. Second, we ask that the Department clarify the scope of the Proposal in connection with the proposed disclosure requirements for target date or similar funds (“Target Date Funds”).

Changes to QDIA Regulation are not Tailored to Managed Account Services

Although the Proposal relates principally to “Target Date Disclosure,” the Proposal also adds a number of disclosure requirements to the QDIA Regulation that would be applicable to all QDIAs, not just Target Date Funds.<sup>2</sup> These proposed amendments focus on the types of disclosures and information that mutual funds registered under the Investment Company Act of 1940 (“1940 Act”) typically provide to investors and are not generally appropriate for investment management services such as managed accounts.<sup>3</sup>

The QDIA Regulation lists three types of potential long-term QDIAs—Target Date Funds,<sup>4</sup> balanced funds,<sup>5</sup> and managed accounts.<sup>6</sup> While the first two types of QDIAs are described as “investment fund product[s] or model portfolio[s],” the managed account-type QDIA is described as an “investment management service,” not a fund or portfolio. As described above, investment management services such as those we offer allocate individual participant accounts among existing Plan investment alternatives to provide an asset mix that, among other factors, takes into account an individual’s age or target retirement date. In the preamble to the QDIA Regulation, the Department acknowledges the distinction between investment management services and other types of QDIAs, stating that it “included investment management services within the scope of fiduciary relief in order to avoid any ambiguity concerning the scope of relief available to plan fiduciaries in the context of participant directed individual account plans.”<sup>7</sup> The disclosure requirements that the Proposal would add to the QDIA Regulation for all QDIAs may be reasonable and appropriate for investment fund products or model portfolios, particularly 1940 Act-registered mutual funds. However, many of these disclosure requirements are not appropriate for QDIAs that are investment management services such as managed accounts.

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<sup>2</sup> See proposed 29 CFR § 2550.404c-5(d)(3)(i)-(v) and the requirement in proposed 29 CFR § 2550.404c-5(c)(4) to provide the material set forth in 29 CFR § 2550.404a-5(d)(3) and (4).

<sup>3</sup> Similar issues to those discussed below may also arise in connection with the Department’s regulation on disclosure in participant-directed individual account plans, see 29 CFR § 2550.404a-5.

<sup>4</sup> 29 CFR § 2550.404c-5(e)(4)(i).

<sup>5</sup> 29 CFR § 2550.404c-5(e)(4)(ii).

<sup>6</sup> 29 CFR § 2550.404c-5(e)(4)(iii).

<sup>7</sup> Preamble to the QDIA Regulation, 72 Fed. Reg. 60452, 60462 n.8 (Oct. 24, 2007)

For example, the Proposal would require disclosure of, among other items, a description and amount of sales loads or charges, redemption fees, surrender charges, exchange fees, and the annual operating expenses (e.g., the expense ratio) of the QDIA.<sup>8</sup> Because a managed account is not a fund or portfolio, but instead a service provided to Plan participants, these shareholder-type fees are not pertinent in the context of a managed account.

In addition, the Proposal would require disclosure of (i) copies of the QDIA's prospectus (or any short-form or summary prospectus whose form has been approved by the SEC or any similar documents); (ii) copies of financial statements or reports, such as statements of additional information or shareholder reports, and any other similar materials related to the QDIA, if such materials are provided to the Plan; (iii) a statement of the value of a share or unit of an investment in the QDIA, and the date of such valuation; (iv) a list of the assets comprising the portfolio of the QDIA and the value of each such asset (or the proportion of the QDIA which it comprises).<sup>9</sup> Again, these are disclosures which are appropriate for QDIAs that are funds or portfolios, but are not appropriate for managed account services as QDIA because they are either not pertinent or not appropriate to provide at the Plan level (e.g., for managed account services, a list of account assets may be appropriate to provide at the participant level but has less relevance and meaning at the Plan level).

Because a managed account service allocates assets among investment alternatives already existing under the Plan, Plan participants would already receive fee disclosures on underlying investment alternatives as required by the Department's regulation on disclosure in participant-directed individual account plans ("Participant Disclosure Regulation").<sup>10</sup> Furthermore, the existing QDIA Regulation already requires disclosure of fees and expenses attendant to a QDIA.<sup>11</sup> These disclosures should be sufficient to fully inform a Plan participant regarding the fees associated with a managed account service.

Financial Engines strongly encourages the Department to exclude QDIAs that are "investment management service[s]," within the meaning of the QDIA Regulation,<sup>12</sup> such as managed accounts, from coverage under this portion of the Proposal. Forcing disclosures for investment management services to fit within a structure intended for

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<sup>8</sup> See proposed 29 CFR § 2550.404c-5(d)(3)(v).

<sup>9</sup> See proposed 29 CFR § 2550.404c-5(c)(4), requiring a QDIA to provide the material set forth in 29 CFR § 2550.404a-5(d)(4).

<sup>10</sup> 29 CFR § 2550.404a-5.

<sup>11</sup> 29 CFR § 2550.404c-5(d)(3).

<sup>12</sup> 29 CFR § 2550.404c-5(e)(4)(iii).

funds or portfolios would not only impose costs and operational burdens on managed account service providers, but would make the disclosures essentially meaningless and confusing to Plan participants.

#### Clarification Regarding Scope of Target Date Fund Disclosures

We ask that the Department make clear that the Proposal's specific disclosure requirements for Target Date Funds are not intended to apply to any investment product, fund, or service described in sections (e)(4)(ii) or (iii) of the QDIA Regulation.

The Proposal specifies additional disclosures Target Date Funds would be required to make under the Participant Disclosure Regulation<sup>13</sup> and the QDIA Regulation. Under the proposed amendments to the Participant Disclosure Regulation, a covered Target Date Fund is a "designated investment alternative that is described in 29 CFR 2550.404c-5(e)(4)(1) [sic]."<sup>14</sup> Under the proposed amendments to the QDIA Regulation, a covered Target Date Fund is an investment fund product or model portfolio intended to satisfy section (e)(4)(i) of the QDIA Regulation.<sup>15</sup> In either case, a covered Target Date Fund would be defined as:

An investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age.<sup>16</sup>

We are concerned that the above definition is broad enough to encompass investment alternatives that the Department does not intend to include in this portion of the Proposal. In the QDIA Regulation, the descriptions of potential QDIAs are purposefully broad in order to allow "sufficient[] flexibl[ity] to accommodate future innovations and developments in retirement products."<sup>17</sup> However, these broad

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<sup>13</sup> 29 CFR § 2550.404a-5.

<sup>14</sup> See proposed 29 CFR § 2550.404a-5(i)(4). We believe, and the following discussion assumes, the correct citation is 29 CFR § 2550.404c-5(e)(4)(i).

<sup>15</sup> See proposed 29 CFR § 2550.404c-5(d)(vi).

<sup>16</sup> 29 CFR §2550.404c-5(e)(4)(i).

<sup>17</sup> Preamble to QDIA Regulation, 72 Fed. Reg. at 60460.

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descriptions allow for overlap among QDIA definitions. For example, it could be argued that some managed account services fall not only within the description of a managed-account type QDIA in 29 CFR § 2550.404c-5(e)(4)(iii), but also within the terms of 29 CFR § 2550.404c-5(e)(4)(i), as described above. Accordingly, we ask that the Department make clear that investment products, funds, or services described in 29 CFR § 2550.404c-5(e)(4)(ii) or (iii) are excluded from the Proposal's specific disclosure requirements for Target Date Funds.

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Financial Engines appreciates the opportunity to comment on the proposed regulation. We welcome the opportunity to work with the Department and to provide any further assistance that may be required. Please contact us should you have any questions.

Sincerely,

/s/ 

Anne S. Tuttle  
Executive Vice President and General Counsel  
Financial Engines, Inc.