AMERICAN BENEFITS COUNCIL

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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

Attention: Target Date Disclosure (RIN 1210–AB38)

Dear Sir or Madam:

The American Benefits Council (Council) appreciates this opportunity to comment on the Department of Labor's reopening of the comment period on its proposed regulatory amendments regarding target date funds. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans. Target date funds are used by many of our plan sponsor members, including as their plan's qualified default investment alternative (QDIA), and our members support efforts to help participants understand these important investments and make informed choices.

The Department has asked for comments on a recommendation by the Securities and Exchange Commission's Investor Advisory Committee that the Securities and Exchange Commission (Commission) develop a glide path illustration for target date funds that is based on a standardized measure of fund risk as a replacement for, or supplement to, an asset allocation glide path illustration. The Council is pleased to provide our comments, and pledges to continue to work with the Department as it evaluates the disclosures that will best serve participants.

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IMPORTANCE OF EFFECTIVE DISCLOSURE

Many studies have documented the widespread adoption of target date funds in 401(k) and similar defined contribution plans.[1] Target date funds are the most common QDIA and have proven an important complement to automatic enrollment, itself a successful innovation in retirement plan design.[2] Target date funds can provide asset allocation at low cost and are able to adjust that allocation over time as a participant ages.

Because target date funds play a crucial role in our defined contribution system, we believe it is important as a first principle that the Department's and the Commission's initiatives do no harm. We must keep in mind that many participants' account balances are invested in target date funds because they were defaulted into the investment. Given the limited engagement of defaulted participants – and other participants who may spend very little time analyzing the option before choosing the investment – we believe that disclosure should be easy to understand and neither confusing nor misleading.

For this reason we commend the Department for taking a careful approach to this project. This is the second time the Department has reopened comments. The Department has worked closely with the Commission and we urge the agencies to continue to work closely together.

NEED FOR RE-PROPOSAL BEFORE FINAL RULE

The Commission's notice does not propose any particular standard. The Commission asked a series of questions about various aspects of a risk-based disclosure for target date mutual funds. In fact, the Commission's reopening of its comment period is essentially a request for information, not a proposal.

Similarly, the Department's notice proposes no regulatory language or standard. We cannot, of course, comment on a standard that we have not seen. The Department, therefore, would need to re-propose particular amendments to the QDIA and participant disclosure regulations. The Department could not move immediately to a

[1] *See, e.g.,* Employee Benefit Research Institute, 401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2012 (Dec. 2013) ("Seventy-two percent of 401(k) plans included target-date funds in their investment lineup at year-end 2012"); Fidelity, 7 Hot Retirement Trends in 2014 ("For Generation Y participants, 54% had all their assets in a target date fund, providing this population with a more age-based asset allocation over prior years.").

[2] *See* Vanguard, How America Saves 2014, p. 52 (91% of plans with a QDIA designated a target date fund).

final rule that incorporates changes to the "glide path" illustration or additional risk-based disclosure. We are not recommending a re-proposal, but rather pointing out that one would be necessary if the Department is interested in a disclosure based on a standardized measure of risk.

POSSIBILITY OF CONFUSION

In our prior comment letter, the Council commented that the requirement to disclose that participants can lose money by investing in target date funds and that such investments do not guarantee adequate retirement income could be misleading if applicable only to target date funds. We pointed out that the model participant disclosure chart already contains a sentence that says "Your investment in these options could lose money."

We have a similar concern about requiring a risk-based measure only in the context of target date funds. It seems both incomplete and inconsistent to require this disclosure just for one investment, particularly one that, by definition, includes a mix of asset classes that adjust over time.

We are also concerned that participants might misunderstand the purpose of any such disclosure, unless this itself was a required part of the disclosure. The Commission stated in its recent release that the underlying concern behind the Investor Advisory Committee's recommendation was to help investors understand differences among target date funds offered by mutual fund companies.[3] But participants typically are not comparing among multiple target date funds from different providers. There is generally only one target date fund "suite" among a plan's designated investment alternatives. The key decision for a participant in a qualified retirement plan is whether or not to invest in the target date fund appropriate for his or her expected retirement date, or, alternatively invest in the plan's other investment options. Thus, a comparative disclosure to other target date funds that are not available under the plan would be of little use to plan participants.

NON-MUTUAL FUND INVESTMENTS

Our plan sponsor members offer target date funds in a number of forms. In addition to a registered mutual fund, a plan's target date fund might be a collective trust, a separately managed account, or an insurance company separate account. Unlike the Commission's proposal, the Department's rules will affect a variety of investment types not subject to the Investment Company Act of 1940. The Department should consider

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[3] *See* 79 Fed. Reg. 19564, 19565 (April 9, 2014) (Investor Advisory Committee's recommendation was to "promote comparability").

whether a new requirement under the QDIA and participant disclosure regulations is workable with respect to unregistered investment structures. As stated earlier, the Department would need to provide notice and an opportunity to comment on this important aspect, which will not be considered by the Commission. It is possible that a rule applied to qualified plan investments could be different from (i.e., require less detailed disclosure than), but still not conflict with, any requirements set forth by the Commission. Such a subset might be able to address the needs of qualified plan participants without being identical to a Commission rule.

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Again, we appreciate the opportunity to offer our comments. We believe that the American Benefits Council offers an important and unique perspective of the employer sponsors of, and service providers to, retirement plans and we look forward to working with you.

Sincerely,

Jan Jacobson
Senior Counsel, Retirement Policy