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January 14, 2011

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Suite S-2524
Washington, DC 20210

Dear Assistant Secretary Borzi:

We are writing in response to the Department's request for comments on its proposed rules for better disclosure to workers and retirees about target date retirement investment options that may be available through their 401(k) and similar plans, either as an investment option or as a default investment. We believe the proposed rule must be strengthened if it is to provide workers with the information they truly need to make informed retirement decisions.

As the Department knows, during the next 20 years, over 75 million Baby Boomers will reach retirement age. In fact, the first Boomers turned 65 just this month. Many of these workers will likely be forced to make a difficult choice – either to continue to work or retire on inadequate income. The ability of workers to retire when they want to and can afford to also has important implications for job opportunities for younger and unemployed individuals and long term economic growth.

Approximately 20 million workers are covered by defined benefit pension plans and over 60 million are covered by defined contribution plans, primarily 401(k) plans. One of the key differences between these two types of plans is how employee and employer contributions are invested. Defined benefit plan assets generally are professionally invested by licensed investment experts. Defined contribution plans generally are structured by employers to offer workers dozens of investment options and the workers bear all of the burden of making investment decisions. Studies of worker investment knowledge have found that workers have limited understanding of investments and want simple investment choices. Several studies have found that workers earn on an annual basis at least one percent less in defined contribution plans than under defined benefit plans. This translates into approximately a third less retirement income over a working lifetime.

This is where target date funds come in. Responding to workers' interest in simple unified investment options, the financial services industry developed target date funds to provide a single investment option that included a variety of different asset classes. The fundamental idea behind target date funds was largely universally endorsed. Target date funds received a major boost in 2006 when the Department specifically included them as one of three automatically preferred default investment options. According to the Department's estimate, sixty percent of workers are offered a target date fund either as an investment option or as a default investment.

The problem is that the target date fund is still in the process of being developed and perfected. Controversies in recent years have revealed target date funds with misleading names, hidden and excessive fees, weak performance, conflicts of interest, etc. The Department's proposed rule largely sidesteps the many troubling issues that have been raised about target date funds. The issues related to target date funds are similar and related to many other issues confronting the Department including inadequate disclosure of fees, inadequate disclosure and mitigation of conflicts of interest, inappropriate and self-interested delivery of investment advice, and inadequate and unclear fiduciary duty responsibilities. The Department and other interested stakeholders need to ask a fundamental question – are target date funds fulfilling the retirement security role for which they were created or do they need improvements in order to fulfill their place as simple diversified investments for passive investors?

There is an opportunity for the Department, and the Administration, to play a leadership role in improving retirement security in this country. These issues require a more comprehensive examination than small tweaks to existing rules. The Department should establish a working group or a commission to fully examine the current legal and regulatory environment surrounding private sector pension plans and make recommendations to address weaknesses in the operation of these plans. Any group should be comprised of all key stakeholders – worker representatives, academic experts, employers, and financial service firms. Since our knowledge about retirement income and incentives keeps developing, this should be an ongoing effort amongst everyone concerned with improving retirement security in our country.

With respect to the proposed rule, the Department or its designees need to examine the broader questions of what key investment options should comprise a diversified retirement investment portfolio, what key information employers and workers need to receive about available investment options, what types of investment education or advice should be permissible to workers and employers, etc. The Department must also ensure that employers know how to evaluate investment options and materials provided to workers are understandable. The Department should not leave workers and employers on their own to figure out these complex issues.

In response to the Department's specific requests and proposals:

- Employers and providers should provide workers with uniform disclosure materials that are consistent and understandable. Qualified default investment and participant disclosure materials should provide the

same information and not require participants to search the other document by references and cross references.

- The Department should not eliminate disclosures of all fees and expenses or move to a statement that fees “may” apply with a reference to where the information may be found. Such a change would undermine the Department and Congress’ efforts over the past few years to make sure that workers and employers know that investment options contain fees and that the worker is paying them.
- The information provided to participants needs to be in plain English and the Department should put forth model language. Participants and employers likely do not understand terms such as “glide path” and “conservative asset allocation,” but would understand explanations such as “we assume you will cash out your account when you retire” or “we assume you will make periodic withdrawals after retirement and continue the account until your death.” As an example, the three largest target date funds have significantly different “glide paths” varying from 7 to 30 years after the fund target date, but did not prominently or clearly explain them in their 2008 fund prospectuses.
- It does not appear that the proposed rule provides participants all of the information that they need. Particularly with respect to a default investment, the participant likely would want to know how and why the employer selected that option and what protections it offers the participant (compared to other investment options available to the participant under the plan) (the rule already would require explanation of what the option does not offer).
- Finally, the rule only addresses target date default and general investment options. Many similar issues have arisen for other investment options, including the other preferred default options. For example, managed account providers may not disclose changes in their target asset allocation or performance compared to other comparable investments.

As always, we stand ready to work with you to improve workers’ retirement security and appreciate the good work that the Department is attempting to achieve for workers, retirees, employers, and the country. The Government Accountability Office also will soon release several reports relevant to the Department’s efforts on target date funds and investment advice that we hope will be considered part of the record in this rulemaking.

Sincerely,



GEORGE MILLER
Senior Democratic Member



ROBERT E. ANDREWS
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