

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210-AB38

Target Date Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Department of Labor’s Employee Benefits Security Administration is reopening the period for public comment on proposed regulatory amendments relating to enhanced disclosure concerning target date or similar investments, originally proposed November 30, 2010, in a previously published document in the Federal Register. In 2013, the Securities and Exchange Commission’s Investor Advisory Committee recommended that the 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 Department is reopening the comment period on its 2010 proposal, which

contained an asset allocation glide path illustration requirement, to seek public comment on this recommendation.

DATES: Written comments on the proposed regulation published at 75 FR 73987 (Nov. 30, 2010) should be received by the Department of Labor no later than **[INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Persons submitting comments electronically are encouraged not to submit paper copies.

Comments identified by RIN 1210–AB38 may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* e-ORI@dol.gov
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, *Attention:* RIN 1210–AB38; Target Date Disclosure.

Comments received by the Department of Labor may be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and will be made available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In November 2010, the Department published a proposal to amend its qualified default investment alternative regulation (29 CFR 2550.404c-5) and participant-level fee disclosure regulation (29 CFR 2550.404a-5).¹ The proposal includes more specific disclosure requirements for target date or similar funds (TDFs), based on evidence that plan participants and beneficiaries would benefit from additional information concerning these investments. Specifically, the proposal would require an explanation of the TDF's asset allocation, how the asset allocation will change over time (the TDF's "glide path"), and the point in time when the TDF will reach its most conservative asset allocation; including a chart, table, or other graphical representation that illustrates such change in asset allocation. The proposal also would require, among other things, information about the relevance of the TDF's "target date;" any assumptions about participants' and beneficiaries' contribution and withdrawal intentions following the target date; and a statement that TDFs do not guarantee adequate retirement income and that participants and beneficiaries may lose money by investing in the

¹ See 75 FR 73987 (Nov. 30, 2010), proposing to amend the Department's qualified default investment alternative regulation, 72 FR 60452 (Oct. 24, 2007), and participant-level fee disclosure regulation, 75 FR 64910 (Oct. 20, 2010).

TDF, including losses near and following retirement. Additional background and other information are contained in the Supplementary Information published with the proposed amendments.² The comment period for the proposal originally closed on January 14, 2011.

Throughout this regulatory initiative, the Department has consulted with the Securities and Exchange Commission (Commission). In the proposal, the Department specifically requested comment on whether the final rule should incorporate any of the elements of a rule proposed by the Commission to address concerns regarding the potential for investor misunderstandings about TDFs.³ In response, a large number of commenters strongly encouraged careful coordination with the Commission to avoid the potential cost and confusion (on the part of plan sponsors and participants and beneficiaries) that could result if the two agencies were to establish inconsistent disclosure requirements. Because of the relationship between the Department's and the Commission's regulatory proposals, the Department has continued to consult with Commission staff while working to issue a final rule.

Accordingly, when the Commission reopened the public comment period for its proposal in 2012 to solicit feedback on research findings from the Commission's investor testing of comprehension and communication issues relating to TDFs,⁴ the Department similarly reopened the comment period for its proposed TDF regulation.⁵ At that time, the Department invited additional comments in light of the Commission's research and received ten additional public

² *See id.*

³ Commission Release Nos. 33-9126, 34-62300, IC-29301 (June 2010).

⁴ *See* 77 FR 20749 (April 6, 2012).

⁵ *See* 77 FR 30928 (May 24, 2012).

comments, which are available for review on the Department's website.⁶ Both agencies then resumed work on their respective regulatory initiatives.

In April 2013, the Commission's Investor Advisory Committee (Committee) formally submitted several recommendations⁷ concerning target date mutual funds. These recommendations include, for example, that the Commission "develop a glide path illustration for target date funds that is based on a standardized measure of fund risk ... as either a replacement for or supplement to its proposed asset allocation glide path illustration."⁸ In response to the Committee's recommendations, the Commission again reopened the public comment period for its proposal on April 9, 2014, and requested comments on or before June 9, 2014.⁹

Accordingly, the Department has also decided to reopen the comment period for its regulatory proposal. Although the principal purpose of this action is to obtain public comments on the Committee's recommendations, including the development of a glide path illustration based on a standardized measure of fund risk, the Department also welcomes comments on any other matters that may have an effect on the Department's proposal. Parties who submit comments responding to the Commission's reopened comment period, and which are germane to the Department's rulemaking initiative, may send a copy to the Department or simply notify the Department of such comment and request that it be included in the record of the Department's

⁶ See <http://www.dol.gov/ebsa/regs/cmt-1210-AB38.html>.

⁷ See "Target Date Mutual Funds" at <http://www.sec.gov/spotlight/investor-advisory-committee-2012.shtml>. Both the Committee's recommendations and a letter from Commission Chair White in response to the recommendations are available on the Commission's website.

⁸ <http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-target-date-fund.pdf>.

⁹ The Commission's Notice of request for additional comment was made available on the Commission's website, at <http://www.sec.gov/rules/proposed/2014/33-9570.pdf>, on April 3, 2014, and published in the Federal Register, at 79 FR 19564, on April 9, 2014.

rulemaking as well. Accordingly, the Department is extending the comment period until **[INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Signed at Washington, DC, this 27th day of May, 2014.

Phyllis C. Borzi

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