

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. IC-28725; File No. 4-582]**

**Hearing on Target Date Funds and Similar Investment Options**

**AGENCIES:** Employee Benefits Security Administration, U.S. Department of Labor (“Department”) and Securities and Exchange Commission (“Commission”) (each, an “Agency,” collectively, the “Agencies”).

**ACTION:** Notice of hearing.

**SUMMARY:** Notice is hereby given that the Department of Labor and the Securities and Exchange Commission will hold a joint one-day hearing on issues relating to investments in target date funds and similar investment options by 401(k) plan participants and other investors.

**DATES:** The one-day hearing will be held on June 18, 2009, beginning at 9 a.m., EST.

**ADDRESSES:** The hearing will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Fred J. Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, at (202) 693-8500, or Tara R. Buckley, Office of Chief Counsel, Division of Investment Management, U.S. Securities and Exchange Commission, at (202) 551-6825. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** “Target date” or “lifecycle” funds and other similar investment options (“TDFs”) are investment products that allocate their investments among various asset classes and automatically shift that allocation to more conservative investments as a “target” date approaches. This shift in asset allocation, often referred to as a fund’s “glide path,”

may differ significantly among funds with the same target date. Recent studies suggest that TDFs are becoming more common as investment options in participant-directed retirement plans, such as 401(k) plans.<sup>1</sup> The growing popularity of TDFs has focused attention on issues relating to the design, operation and selection of TDFs as investment options. The designation of investment options to be made available under a private-sector retirement plan is governed by the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”). Persons with this responsibility must prudently select and monitor those investment options.

The Department’s 2008 ERISA Advisory Council studied several aspects of TDFs as 401(k) plan investment options, including the challenges and risks they may pose to plan fiduciaries and to participants who invest in TDFs, the different types of TDFs, and appropriate criteria for adopting and monitoring them. In its 2008 report to the Secretary of Labor, the Advisory Council recommended that the Department provide additional guidance to plan fiduciaries on the selection and monitoring of TDFs. The Advisory Council also called for the development of participant education materials and illustrations to enhance awareness of the value and the risks associated with these investments.<sup>2</sup>

The U.S. Senate Special Committee on Aging recently began an investigation of certain TDFs marketed to 401(k) plans. In preliminary findings shared with the Agencies, the Committee found a wide range of objectives, portfolio compositions, and risks among same-year TDFs. The Committee expressed concern that, given these variations, some investors may be

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<sup>1</sup> Employee Benefits Research Institute Issue Brief #327, March, 2009.

<sup>2</sup> See 2008 ERISA Advisory Council Working Group Report on Hard to Value Assets and Target Date Funds, found at: <http://www.dol.gov/ebsa/publications/2008ACreport1.html>.

investing in TDFs without being aware of the financial risk. The Committee therefore urged the Agencies to commence a review of TDFs.<sup>3</sup>

In view of the importance of these issues for the retirement savings of investors, the Department and the Commission have decided to hold a public hearing. The primary purpose of this hearing is to determine if additional guidance by either Agency would be helpful. The Agencies are specifically interested in obtaining information on:

- how TDF managers determine asset allocations and changes to asset allocations (including glide paths) over the course of a TDF's operation;
- how they select and monitor underlying investments;
- how the foregoing, and related risks, are disclosed to investors; and
- the approaches or factors for comparing and evaluating TDFs.

The hearing will be held on June 18, 2009, beginning at 9 a.m. and ending at 5 p.m., EST, in the plaza auditorium of the U.S. Department of Labor, Francis Perkins Building, at 200 Constitution Avenue, NW, Washington, DC 20210.

Persons interested in presenting testimony and answering questions at this public hearing must submit, by 3:30 p.m., EST, June 5, 2009, the following information: (1) A written request to be heard; and (2) An outline of the topics to be discussed, indicating the time allocated to each topic. It should be noted that, while reasonable efforts will be made to accommodate all requests to testify, it may be necessary to limit the number of those testifying in order to adhere to the hearing's one-day format. Any persons not afforded an opportunity to testify will nonetheless have an opportunity to submit a written statement for the record. The hearing will be open to the general public.

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<sup>3</sup> The Committee held a related hearing on February 25, 2009. See: [http://aging.senate.gov/hearing\\_detail.cfm?id=309027&](http://aging.senate.gov/hearing_detail.cfm?id=309027&).

Because the Agencies will jointly review all responses submitted, interested parties may send requests and outlines to either Agency and need not submit responses to both Agencies. Respondents are encouraged to use the title “Target Date Fund Joint Hearing” to facilitate the organization and distribution of responses between the Agencies. Interested parties are invited to submit responses to:

Employee Benefits Security Administration, U.S. Department of Labor: To facilitate the receipt and processing of responses, the Department encourages interested persons to submit their requests and outlines electronically by e-mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov). Persons submitting requests and outlines electronically should not submit paper copies. Persons submitting requests and outlines on paper should send or deliver their requests and outlines (preferably at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Target Date Fund Joint Hearing, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. All requests and outlines submitted will be available to the public, without charge, online at <http://www.dol.gov/ebsa> and at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Securities and Exchange Commission: Responses may be submitted by any of the following methods:

Electronic Responses:

- Use the Commission’s Internet comment form ([www.sec.gov/news/other.shtml](http://www.sec.gov/news/other.shtml)); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-582 Target Date Joint Hearing on the subject line.

Paper Responses:

- Send paper requests and outlines in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-582 Target Date Fund Joint Hearing. This file number should be included on the subject line if e-mail is used. To help us process and review your requests and outlines more efficiently, please use only one method. The Commission will post all requests and outlines on the Commission's Internet Web site (<http://www.sec.gov>).

Requests and outlines are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All requests and outlines received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Agencies will prepare an agenda indicating the order of presentation of oral comments and testimony. In the absence of special circumstances, each presenter will be allotted ten (10) minutes in which to complete his or her presentation.

Information about the agenda will be posted on <http://www.dol.gov/ebsa> and <http://www.sec.gov> on or after June 10, 2009, or may be obtained by contacting Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8500, or Tara R. Buckley, Office of Chief Counsel, Division of Investment Management, U.S. Securities and Exchange Commission, at (202) 551-6825.

Those individuals who make oral comments and testimonies at the hearing should be prepared to answer questions regarding their information and/or comments. The hearing will be

transcribed. The hearing also will be available via webcast on the Department's Web site at <http://www.dol.gov/ebsa> and on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

Any individuals with disabilities who may need special accommodations should notify Fred Wong on or before June 10, 2009.

### **Notice of Public Hearing**

Notice is hereby given that a one-day public hearing will be held on June 18, 2009, concerning issues related to investments in TDFs. The hearing will be held beginning at 9 a.m. in the plaza auditorium of the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210.

By the U.S. Department of Labor.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration,  
U.S. Department of Labor

Dated: May 19, 2009

By the Securities and Exchange Commission.

Elizabeth M. Murphy

Secretary

May 19, 2009