United States Senate
WASHINGTON, DC 20510

August 23, 2010

Chairman Mary L. Shapiro
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Regulation on Target Date Retirement Fund Names and Marketing File Number S7-12-10

Dear Chairman Shapiro:

We submit these comments in response to the regulation regarding target date funds proposed by the Securities and Exchange Commission ("SEC"). As discussed below, we commend the SEC for taking steps to address issues relating to target date funds. However, we recommend that the SEC both broaden the application of the rule to non-mutual funds and require the inclusion of additional disclosures in marketing materials. Additionally, we urge the SEC – together with the Department of Labor ("DOL") – to remind plan fiduciaries of their duty to prudently select and monitor target date funds offered to participants in defined contribution pension plans.

I. Background

Since the enactment of the Pension Protection Act of 2006, there has been a significant uptick in retirement savings, in large part thanks to the increasing use of automatic enrollment in defined contribution pension plans and guidance from the DOL that encourages the use of target date funds. The Employee Benefit Research Institute in its April 2010 Issue Brief found that "the adoption of automatic enrollment in 401(k) plans is likely to have a very significant positive impact in generating additional retirement savings for many workers, especially for young and low-income workers." Automatic enrollment has resulted in the rapid growth of the target date fund market. A recent study commissioned by the DOL estimates that approximately 70 percent of employers now use target date funds as their default investments, and there are over $227 billion currently invested in target date funds.

Target date funds certainly show a lot of promise as a useful investment vehicle for defined contribution plans. However, the effects of the economic downturn on target date funds highlighted for us that there is still a lot of work that needs to be done to safeguard the financial security of workers and retirees. Specifically, it is clear that not all target date funds are created equal. According to retirement benefit experts, some target date funds charge excessive fees, lack adequate transparency, and have conflicts of interests. While target dates funds can be quite useful as a retirement savings tool for workers and their families, there is still room for improvement. Therefore, we applaud the SEC and DOL for taking critical steps to improve oversight and enhance investor education guidance to that effect.

We are particularly pleased that the SEC has proposed a rule to address concerns that the advertising of target date funds could be misleading or confusing to participants. Most target date funds include a year in their name, and that year is typically meant to reflect a particular retirement date. However, there appears to be a diversity of views within the investment community as to how target date funds should be invested at the target date. Some funds are structured to reach a conservative, static investment allocation on the target date while others do not become static until many years after the retirement date. Thus, we believe the inclusion of a target date in the name of the fund provides plan participants with insufficient information about the investment strategy of the fund. Without additional information, participants could be confused or left with a fundamental misunderstanding of the fund's investment strategy.

II. Comments on Proposed Regulation

We offer the following comments on the proposed target date fund rule:

a. Application to Non-mutual Funds

We are deeply concerned about the limited scope of the proposed rule. The disclosures required by the proposed rule would only be effective with respect to mutual funds, but not all target date funds are mutual funds. In fact, a growing number of defined contribution plan fiduciaries are electing to use "custom" target date funds (*i.e.*, target date funds constructed from investments otherwise available through the plan) or funds that may be exempt from the Investment Company Act of 1940, such as bank maintained collective investment trusts or insurance company separate accounts. Therefore, we encourage the SEC to find ways to expand the application of the proposed disclosure requirements, within its authority, to all target date funds being offered to defined contribution plans. To the extent the SEC lacks jurisdiction, we encourage the SEC to work closely with the DOL, which has broad authority to regulate the use of pension plan assets and the services provided to plans, and other appropriate regulators.

b. Additional Advertising Disclosures

We support the proposal to require that a target date fund's name be accompanied by additional information about the fund's asset allocation and the requirement that marketing materials contain a depiction of the fund's glide path and other disclosures. However, we are concerned that, on its own, the depiction of a fund's glide path fails to provide any real context or explanation that would actually help the average investor determine if the investment is appropriate for them. Therefore, we encourage the SEC to broaden the scope of the disclosures required in marketing materials to include a clear statement – written in a manner calculated to be understood by the average investor – explaining the following:

- the age group for whom the fund is designed;
- the relevance of the date used in the fund's name;
- the fund's assumptions about the investor's withdrawal intentions after reaching the target date;
- the rationale behind the glide path used in the target date fund; and

- whether the target date fund is intended to be a fund of funds and, if so, whether any of the underlying funds are affiliated with the target date fund's manager.

Clear, prominent disclosure of such information is necessary to ensure that those investing in target date funds can easily understand the nature of the investment and are not confused by the fund's name.

c. Graphic Illustration of Target Date Fund Composition

In the proposed regulation, the SEC requested comments on the use of tables, charts or graphs, and a related narrative disclosure to help assist investors and retirement plan participants/workers to better understand the investment composition of specific target date funds. We support the use of graphs, along with an accompanying statement or narrative, in a prominent place in target date advertisements. While the use of tables and charts would be helpful, we believe the visualization of a graph will provide the investor with a better understanding of each target date fund's glide path. The graphs should not contain so much information that it will confuse investors but should contain information concerning the investment composition at the starting date, the target date, and the final allocation in retirement. We also believe that the graphs should be presented in a way to allow greater comparison of target dates funds within a family of funds of an investment manager as well as comparison with other target date funds on the market.

III. Additional Comments

In addition to addressing the comments above, we strongly urge the SEC and DOL to continue and enhance their campaign to educate plan fiduciaries of their duties when selecting target date funds under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Target date funds are not necessarily "set it and forget it" investments, so plan fiduciaries also must continually monitor and reevaluate the management, the investment strategy (*e.g.*, implementation of the glide-path), fees, as well as other factors of the funds being offered to plan participants, particularly those used as Qualified Default Investment Alternatives pursuant to DOL regulations.

The May 6, 2010 Investor Bulletin issued by the SEC and DOL provided guidance for investors and plan participants/workers. We hope that additional guidance will be forthcoming for retirement plan fiduciaries. We also are supportive of guidance specifically for small businesses that sponsor defined contribution plans with target date funds.

Finally, we recommend that the SEC continue its work with the DOL to study the management and composition of target date funds. For example, the SEC and DOL should carefully consider whether there are asset allocation models or glide-paths that should be prohibited *per se* because they are always inappropriate or are inappropriate for default investments in defined contribution plans. Further study also may reveal a need for greater oversight of conflicts of interest or self-dealing, which may arise where, for example, a manager includes a poorly performing proprietary fund in a target date portfolio to boost assets or garner additional fees.

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Thank you for all of the work you are doing to help families across America by protecting their access to a safe and secure retirement system. We look forward to working with you on these issues.

Sincerely,

Tom Harkin	Michael Enzi	Herb Kohl
Chairman	Ranking Member	Chairman
HELP Committee	HELP Committee	Aging Committee

cc: Assistant Secretary Phyllis C. Borzi
U.S. Department of Labor, Employee Benefits Security Administration

Commissioner Kathleen L. Casey
U.S. Securities and Exchange Commission

Commissioner Elisse B. Walter
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