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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attn: Target Date Amendments

RE: Proposed Target Date Disclosure Regulation

Dear Sir or Madam:

Vanguard appreciates the opportunity to comment on the Department of Labor's proposed target date fund (TDF) disclosure amendments to the qualified default investment alternative (QDIA) and participant fee disclosure regulations. We support disclosures for TDFs that highlight important information without overwhelming participants, through a coordinated regulatory framework. We believe that, overall, the Department's proposal strikes the right balance, and we appreciate the Department's efforts to harmonize regulation with the Securities and Exchange Commission.

Vanguard is one of the world's leading asset managers, managing \$1.6 trillion in assets for institutional and retail investors. We are also a leading asset manager and recordkeeper for defined contribution (DC) and defined benefit (DB) plans and Individual Retirement Accounts. Specifically, we manage nearly \$400 billion in DC and DB assets and provide recordkeeping and administrative services for more than 3.5 million participants in 2,500 DC plans and approximately 550,000 participants in DB plans.

In particular, we support the Department's proposals encouraging the use of charts and graphs to clearly illustrate each TDF's asset allocation and glide path, allowing participants to better evaluate whether a TDF is consistent with their overall retirement goals. We also agree that further explanation of the relevance of a date in a TDF's name, the TDF's investment approach, and the participant group for whom a fund is designed will be beneficial. That said, we are concerned that disclosure requirements emphasizing the market risk of a TDF in isolation from other factors, without any detail about the relative risks presented by other investment options available in a plan, may leave the false impression that TDFs are inherently riskier or less "guaranteed" than other available investments.

The discussion below details Vanguard's recommendations and provides additional comments on the Department's proposals.

1. TDFs are overwhelmingly popular as a simple and very effective means of achieving a diversified retirement portfolio

Vanguard is a leading provider of low-cost TDFs, serving more than 20 million shareholder accounts. Our TDF offerings include a retirement income fund and a range of eleven different funds with target dates ending in five-year increments between 2005 and 2055. Vanguard's TDFs follow our overall investment philosophy combining diversification, low cost, transparency and a long-term investment outlook. We believe TDFs allow participants to overcome challenges such as lack of time, knowledge or inclination to research investments to effectively and simply create a well-diversified portfolio at a low cost. Indeed, our research confirms that TDFs lead to broader diversification and more balanced portfolios than participants have generally constructed on their own.¹

TDFs have grown tremendously in importance to plan sponsors and participants in recent years. Use of TDFs by sponsors and participants has soared, particularly since the Pension Protection Act was enacted in 2006 and the QDIA regulation was finalized in 2007. An analysis of Vanguard's DC plan data reveals that 75 percent of plan sponsors offered TDFs as of the end of 2009, a steep increase from 28 percent at the end of 2005.² Among plan sponsors who chose to designate a QDIA within their plans, 80 percent designated a TDF as the QDIA.³ TDFs were similarly popular with participants: as of year-end 2009, 36 percent of participants who have TDFs available in their plans have invested in those funds, up from 8 percent at the end of 2005.⁴

The growth in TDF utilization since the QDIA regulation was finalized in 2007 coincided with a severe financial crisis and the most precipitous decline in the stock market since the 1930s, both of which negatively affected nearly every asset class. TDFs, however, helped participants navigate the crisis, by providing superior diversification and greater balance in asset allocation than many participants chose on their own. At the end of 2009, 25 percent of participants had either no exposure to equities or 100 percent exposure to equities.⁵ In contrast, participants investing in TDFs were more diversified, holding both equities and fixed-income investments.

This diversification offered by TDFs, paired with ongoing contributions, helped participants recover significant ground after the economic downturn. In particular, data on Vanguard DC plans shows that 71 percent of participants who continuously participated in plans between September 2007 and September 2010 experienced increases in account balances during that period, while 20 percent saw balances decline between 1 and 20 percent, less than the stock market's decline during the same period.

Given the demonstrated importance and impressive track record of TDFs, any proposal to modify the regulatory structure that applies to TDFs should balance an interest in improving participant understanding with an appreciation of the risk that additional regulatory requirements may hamper further

¹ *How America Saves 2010 – a Report on Vanguard 2009 Defined Contribution Plan Data* at page 45.

² *Id.* at page 52.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at page 45. This percentage, while significant, is a steep decline from the 44 percent of participants adopting extreme asset allocations in 2000.

innovation or may overwhelm or confuse participants, undoing the improved diversification that TDFs have fostered.

2. Vanguard supports the use of pictorial disclosure of a TDF's asset allocation and glide path

We agree that it is important for participants to understand the asset allocation and glide path of each TDF, and we strongly support the use of charts and graphs to help participants. In particular, we agree that participants need a solid understanding of a TDF's current asset allocation, and how that asset allocation changes at and after its target date.

Our experience has shown us that the use of charts and graphs and, where possible, web-based tools to illustrate a TDF's asset allocation at various points in time is more effective than narrative descriptions. We strongly support the proposed regulation's use of these tools.

3. Vanguard supports the regulation's flexibility for the provision of clear, concise disclosures

Additionally, we appreciate the flexibility of the proposed regulation in providing that disclosure of a TDF's asset allocation should include a chart, table or other graphical representation illustrating the change in asset allocation over time, in a way that does not "obscure or impede" a participant's understanding of the information explained. Participant communications constantly evolve, as new behavioral research and experience lead to improvements in how complex concepts like retirement investing are explained, and this proposal allows room for further innovation.

In particular, Vanguard commends the Department for proposing a disclosure that illustrates asset allocation over the life of a TDF, rather than focusing solely on the allocation at a single point in time, such as the fund's landing point or the named retirement date. Many participants are invested in TDFs at a young age and will be accumulating assets over many years. It is important that these participants are aware of the asset mix of the funds over the course of their working lives as well as the asset allocation at the fund's landing point. We agree that the Department's approach increases the likelihood that TDF disclosures will strike the right balance in communicating key information without overwhelming participants.

Consistent with that flexibility, we ask the Department to confirm in the preamble to the final regulation that the regulation's asset allocation and glide path disclosure requirements could be satisfied solely with a graphical representation of a TDF's asset allocation, how it changes over time and when it reaches its most conservative allocation. Plan sponsors should be given the flexibility to use the most effective means of communication to deliver the required information. Requiring both a narrative and a graphical description of all the information could confuse and overwhelm participants, resulting in fewer actually taking the time to read and understand the materials.

4. Vanguard supports meaningful disclosure of the relevance of the TDF date and recommends clarification of proposed disclosures involving the target date

Under the proposal, the relevance of the date in a TDF's name, the age group for which the TDF is designed and any assumptions about a participant's contribution or withdrawal intentions on a TDF's date must be clearly explained. In that regard, we agree that TDFs should explain whether the TDF is managed "to" or "through" retirement – that is, whether and to what extent the TDF's asset allocation

continues to change near and following the TDF's named retirement date. Participants should receive an explanation of each of these elements to encourage greater understanding of a TDF's design as the TDF nears and passes its target date, and the Department's proposal appropriately encourages this communication.

Vanguard suggests, however, that the Department clarify some of the details in how this information should be communicated.

- **Disclosures should refer to the intended retirement date, not the age group for which the investment is designed.** The Department's proposal requires disclosure of the age group for whom the investment is designed. In our experience, the year included in the name of a TDF is more generally considered the year a participant may retire or be assumed to retire. That year does not always coincide with the age a participant should be when investing in a TDF. When a TDF is used as a QDIA, plan sponsors typically assume that participants will retire at age 65, and default those participants into the TDF that most closely matches that year. However, a non-defaulted participant planning to retire at age 55 may affirmatively choose a TDF managed to an earlier retirement date than a participant would select if he or she planned to retire at age 65. Accordingly, we ask the Department to confirm that an explanation that the year in the TDF name is intended to be the year closest to when a participant is expected to retire is an appropriate level of disclosure, rather than disclosure of the age group for which the TDF is designed.
- **Disclosure of a TDF's expectations of contribution and withdrawal behavior should be clear and concise.** We also ask the Department to clarify the requirement that any assumptions about a participant's "contribution and withdrawal intentions on or after" the TDF's target date must be disclosed. As noted, the disclosure should explain to participants the TDF's management surrounding the fund's target date. For example, a statement that a TDF is designed for a participant who will be invested in that fund (or a similar fund in an IRA) for a period of several years past retirement, with contributions ending at retirement and gradual withdrawals from the account after retirement, should be considered an appropriate level of disclosure regarding a participant's contribution and withdrawal intentions.

5. The Department's regulation should avoid isolated emphasis on market risk in TDF disclosures

The proposal requires that TDF disclosures include a statement that the participant may lose money by investing in the TDF, including losses near and following retirement, and that there is no guarantee that investment in the TDF will provide adequate retirement income. While we understand the importance of ensuring that disclosures candidly explain the implications of investments in a TDF, we are concerned that this requirement may create an impression among participants that TDFs are more vulnerable to risk of loss near or following retirement than other plan investments when, in fact, participants are subject to market risk in all their investments. We are particularly concerned that "buyer beware" statements required for TDFs under the participant fee disclosure regulation will suggest that TDFs are riskier than other investments described under that regulation without similar disclaimers.

Participant understanding of TDFs and the importance of equity exposure during retirement is more sophisticated than is commonly believed. In a recent Vanguard study published in January of 2011, we found that 87 percent of participants who are aware of and invested in TDFs believe that TDFs involve more than “very little” risk.⁶ Additionally, only four percent of participants who are aware of and invested in TDFs believe TDFs provide a guaranteed return or become risk free when they reach the target year.⁷ That survey also found that more than 90 percent of respondents planned to have an equity position in their portfolios at retirement.⁸ While it is important to continue educational efforts to improve understanding of TDFs and retirement investing in general, it is also critical to do so in a way that does not suggest that TDFs are any riskier or less “guaranteed” than the vast majority of other retirement plan investment offerings.

On the contrary, TDFs do not present a greater risk of loss than many other plan investment options, including other QDIA investments such as balanced funds. Additionally, the proposed requirement that TDFs include a special disclaimer that there is no guarantee that an investment in a TDF will produce adequate retirement income highlights asset allocation over other factors affecting retirement income. No investment guarantees adequate retirement income, which instead depends on multiple factors. A participant’s savings rate, the availability and amount of employer contributions, and the amount, frequency and timing of participant withdrawals, loans and hardship distributions throughout the life of the account all greatly affect retirement income adequacy. Investment allocation and performance is vitally important, but not singular, as a predictor of retirement income adequacy.

Accordingly, we ask the Department to eliminate from the regulation the required statement warning participants that they may lose money by investing in the TDF, including losses near and following retirement, and that there is no guarantee that investment in the TDF will provide adequate retirement income. Instead, we recommend that the Department revise the regulation to follow the traditional disclaimer required by the SEC for all investments that past performance does not predict future results, as well as a statement that the investments in a TDF are not guaranteed at any time, including on or after the retirement date.

6. Vanguard believes a coordinated regulatory approach is critical to fostering effective participant communications

We appreciate the Department’s efforts to coordinate amendments to the QDIA regulation with the requirements of the new participant fee disclosure regulation and with the Securities and Exchange Commission’s regulatory initiatives. Participants in DC plans receive a high volume of important information about their plan accounts through the year, and the Department’s efforts to conform regulatory requirements will allow more focused disclosure, ultimately making it more likely that participant communications will be clear and effective.

We agree with the Department that conforming the regulatory requirements applicable to TDFs will “make it easier for plan fiduciaries and administrators to comply and help avoid confusion among

⁶ John Ameriks, Dean Hamilton and Liqian Ren, *Investor Comprehension and Usage of Target Date Funds: 2010 Survey* (January 2011).

⁷ *Id.*

⁸ *Id.*

participants and beneficiaries who receive the required disclosures.”⁹ Specifically, we support the Department’s proposal to make the QDIA disclosure requirements for TDFs identical to the TDF disclosures required in the participant fee disclosure regulation, as long as delivery of that information is flexible. Specifically, if the Department includes the participant fee disclosure regulation’s investment-related disclosures in the QDIA regulation, we ask the Department to allow plan administrators to satisfy both sets of investment-related requirements through the participant fee disclosure notice. In any event, changes in the QDIA regulation should not result in a need for duplicative disclosure of fee, investment, or other information to participants.

The Department’s efforts could be improved by further clarification of the QDIA regulation’s notice requirement. In particular, we ask the Department to allow QDIA notices to be delivered with participant fee disclosures.¹⁰ The timing and content requirements of these notices are similar, and a cohesive explanation of the attributes of other investment options available in the plan, provided together with a QDIA notice as a stand-alone notice, could help participants whose accounts may be invested in a QDIA more efficiently evaluate whether another plan investment option may be better suited to achieve their investment goals. Plan administrative costs may also be reduced by allowing a streamlined disclosure to satisfy both sets of requirements, which could reduce fees passed through to participant accounts.

Additionally, we appreciate the partnership the Department and the Securities and Exchange Commission have established for TDF regulation. We encourage the Agencies to continue to work together to ensure that regulations allow a single disclosure to satisfy both ERISA and securities law requirements. Overall, the requirements of the Department’s proposal are clear, concise and flexible, and we urge the Department to maintain its streamlined and tailored approach in the final regulation. In that regard, we recommend that the Agencies both embrace the Department’s practical approach and, for reasons explained in our letter to the Securities and Exchange Commission in August of 2010, we suggest that the Agencies modify certain specific disclosure elements and concepts included in the Securities and Exchange Commission’s rulemaking.¹¹

7. Vanguard supports expanded availability of electronic methods for participant disclosure

We appreciate the Department’s coordinated approach to electronic disclosure for QDIA and participant fee disclosure notices. We look forward to the opportunity to submit comments on the Department’s upcoming notice regarding electronic distribution of plan information to participants. In anticipation of that opportunity, we want to emphasize our strong support for an expanded safe harbor for the use of electronic media to effectively convey information to participants.

Over the past ten years, the percentage of participants who contact Vanguard regarding their accounts has remained relatively steady at around 50 percent, whether by contacting phone associates, using the voice-response system, or through the internet.¹² Over that time, however, use of the internet and other

⁹ 75 Fed. Reg. 73987, 73989 (Nov. 30, 2010).

¹⁰ While the Department’s proposed QDIA regulation allowed a QDIA notice to be delivered as part of a summary plan description, summary of material modifications or other notice, the final regulation eliminated this method of providing QDIA notices. See 72 Fed. Reg. 60452, 60454 (Oct. 24, 2007); see also FAB 2008-03, Q-10 (Apr. 29, 2008).

¹¹ See Vanguard comment letter dated August 13, 2010 to *Investment Company Advertising: Target Date Retirement Fund Names and Marketing*, Release Nos. 33-9126; 34-62300; IC-29301 (June 16, 2010), <http://www.sec.gov/comments/s7-12-10/s71210-20.pdf>.

¹² *How America Saves 2010 – a Report on Vanguard 2009 Defined Contribution Plan Data* at 77-78.

electronic forms of communication has overwhelmingly eclipsed other methods of accessing plan information.¹³

In addition to the remarkable increase in electronic communication utilization rates, it is very important to remember that electronic methods result in a much more effective and beneficial participant experience. This is particularly the case with respect to the communication of important disclosures, such as the QDIA and TDF notices, because electronic communication enables a more “point-in-time” disclosure that is much more effective when a participant may be called to act as a result of the disclosure.

Since much of the shift to electronic access and management of plan accounts has occurred since the Department finalized its electronic communication safe harbor in 2002, we agree that it is time to reevaluate the assumptions underlying the regulation. We are eager to work with the Department to develop an electronic communication and delivery approach that recognizes that participants, employers and service providers have come to overwhelmingly prefer – and indeed even expect – electronic delivery to be the default method of plan transaction and communication.

* * *

TDFs have become a vital and very effective retirement investing tool for millions of participants. In a short time, TDFs have encouraged greater diversification and more balanced asset allocations than participants have chosen on their own. Because TDF investments and QDIAs play such an important role in retirement savings, we appreciate the Department’s careful attention to this regulation and the opportunity to comment on this proposal. If you have any questions or require additional information, please contact Ann Combs, Principal, Government Relations at (610) 503-6305.

Sincerely,



R. Gregory Barton

¹³ For example, when measured by total contacts, web contacts accounted for more than 90 percent of all participant contacts with Vanguard-administered plans in 2009. *Id.* at 78.