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Fidelity INVESTMENTS

July 3, 2014

**SUBMITTED ELECTRONICALLY**

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

ATTN: RIN 1210-AB38; Target Date Disclosure

Ladies and Gentlemen:

Fidelity Investments[1] ("Fidelity") appreciates this opportunity to provide the Department of Labor ("Department") additional comments on its proposed amendments to the Qualified Default Investment Alternative ("QDIA") and Participant-Level Disclosure regulations related to target date funds ("TDFs") or similar investments (the "Proposal").[2] The Proposal was initially published on November 30, 2010 and Fidelity submitted a letter in response on January 14, 2011. Fidelity also responded to the re-opened comment period (the "2012 Fidelity Letter") related to a study sponsored by Securities and Exchange Commission ("SEC") regarding individual investors' understanding of target date retirement funds and related marketing materials on July 9, 2012. The Department has re-opened the comment period on the Proposal in light of the SEC solicitation of comments on their proposed rule (the "SEC Proposal") related to TDF marketing materials given recommendations made by the SEC's Investor Advisory Committee ("IAC"), including that the SEC develop a risk based glide path illustration for TDF marketing material that is based on a standardized measure of fund risk (the "IAC's Recommendations").[3]

Retirement readiness is a critical economic issue for our country and thus an important focus for Fidelity and its customers. TDFs play an increasingly important role in the retirement savings of Americans. According to one study, 70 percent of U.S. employers surveyed use TDFs

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[1] Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.
[2] Target Date Disclosure [75 FR 73987 (November 30, 2010)]
[3] *See* Securities and Exchange Commission, *Investment Company Advertising: Target Date Retirement Fund Names and Marketing,* Investment Company Release No. 29301 (April 3, 2014), 79 FR 19564 (April 9, 2014), *available at:* http://www.gpo.gov/fdsys/pkg/FR-2014-04-09/pdf/2014-07869.pdf.

as their default investment option for company sponsored defined contribution plans.[4] Fidelity has a strong interest in both the Proposal, the SEC Proposal and the IAC's Recommendations because we provide recordkeeping, investment management, and custodial services to thousands of Internal Revenue Code Section 401(k), 403(b), and other individual account plans covering over 17 million participants. Fidelity also serves as investment manager for 65 TDFs.

As we stated in our previous comment letters to the Department, we believe that the Proposal, which would incorporate additional TDF information into the QDIA and Participant-Level Disclosure Notices (the "Participant Disclosure Notices"), appropriately balances participants' need for more information about certain aspects of TDFs with the potential harm of overly detailed and/or voluminous information.[5] We appreciate that the Department has and will continue to work with the SEC to coordinate final rules to avoid duplicative disclosures to investors. In response to this additional opportunity to provide comments, we wish to highlight the following points:

- A standardized measure of risk would be difficult to develop and, even if such a standard could be developed, it would not be helpful to plan participants.

- Our continued experience with the development and distribution of Participant Disclosure Notices reiterates the necessity of clear and concise participant communications and raises the need for additional research on the effectiveness of the Proposal.

- Service providers will need sufficient time to make necessary system enhancements to support modifications required by amendments of the QDIA and Participant-Level Disclosure regulations.

In the following sections, we discuss in greater detail our positions and suggestions for improvements as they apply to the Department's Proposal.

***A standardized measure of risk would be difficult to develop and, even if such a standard could be developed, it would not be helpful for plan participants.***

As outlined in Fidelity's comment letter to the SEC dated June 6, 2014[6], a standardized measure of fund risk is inappropriate for TDFs. Further, we believe that a risk-based glide path would not be useful to the average investor and may lead investors to select funds that do not

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[4]*See* Securities and Exchange Commission, *Investment Company Advertising: Target Date Retirement Fund Names and Marketing*, Investment Company Release No. 29301 at footnote 21.
[5] In this letter, we reiterate some of the arguments we made in our previous letters. For a more complete discussion, we refer the Department to those letters. Fidelity also refers the Department to our comment letter submitted to the SEC on the Study, which is attached hereto and to our previous comment letter on the SEC's Proposal which is available at: http://www.sec.gov/comments/s7-12-10/s71210-37.pdf.
[6]For the Department's review and consideration, Fidelity's comment letter to the SEC is available at: http://www.sec.gov/comments/s7-12-10/s71210-102.pdf

deliver an adequate level of retirement income. Given that there is no standardized measure of fund risk in the United States today, and the considerable debate surrounding whether a standardized measure of fund risk would even be appropriate, if the Department considers proceeding with this approach, there should be additional opportunity to comment on the detailed requirements of utilizing a standardized measure of fund risk.

In addition, there are important distinctions between the Department's Proposal and the SEC's. First, the SEC's proposed rules would apply only to registered mutual funds whereas the Department's rules will apply to any QDIA which could include non-registered products as well as managed account services. It is likely that even if a standardized measure of fund risk were feasible for mutual funds, it may not work for other QDIAs. Second, the Department should consider that, unlike a retail investor, a plan participant typically only has one TDF series from which to choose. Thus, the participant would not have a basis for comparison with the provided risk measure. This seems inconsistent with the Department's views that information about the plan's investment options should allow for a comparative review among such options. We trust that in its continued efforts to coordinate with the SEC, the Department will address this critical concern as a standardized risk measure which only applies to mutual fund TDFs and not to other products would cause considerable confusion.

Further, participants may wonder why other investment options available in the plan do not have an associated standardized risk measure and may incorrectly conclude that TDFs are inherently riskier than other plan options which is likely not the case. While additional disclosure could be provided to explain the TDF risk measure to participants, as described below, it appears that participants are not focusing on the disclosures they currently receive. Based on past behavior and experience with current Participant Disclosure Notices, the addition of explanatory disclosure on top of a new risk measure, decreases the likelihood that participants will take the time to read and understand either disclosure. The more likely outcome is that participants will see a risk disclosure on some investment options and not others and conclude that those with risk measures must be riskier.

***Our continued experience with the development and distribution of Participant Disclosure Notices reiterates the necessity of clear and concise participant communications and raises the need for additional research on the effectiveness of the Proposal.***

Since the Department's Proposal was issued, Fidelity has delivered over 39 million Participant Disclosure Notices on behalf of its plan sponsor clients. The Department's Participant Disclosure Regulation (ERISA §2550.404a-5) requires that extensive investment-related information be provided to participants and beneficiaries regarding each of the plan's designated investment alternatives. Fidelity developed a service to assist its clients in meeting their requirements under the regulation and generally followed the format described by the Department in its model comparative chart. The comparative chart varies in length depending on the number of designated investment alternatives a plan offers. Participant Disclosure Notices for Fidelity's clients average over 10 pages (5.4 by 4.25 inches per page).[7] Thus, the notices are rather lengthy and it is unclear whether participants and beneficiaries are actually taking the time to absorb the content. Based on the few calls and questions received from participants related to the Notice since 2012, we suspect that most participants are not spending substantial time reviewing them.

As noted in our 2012 letter, we recommend that the Department evaluate the effectiveness of current communications as well as consider opportunities to streamline disclosures before imposing additional requirements. For example, as noted in both of our previous letters, we believe that the Department should allow QDIA and Participant Disclosure Notices to be consolidated so participants receive the information simultaneously rather than having to refer to separate disclosures provided at different times. The one-time reset allowed under Field Assistance Bulletin 2013-02 has been somewhat helpful in allowing some plans to consolidate the mailing of these notices. However, the differences in the current timing requirements still prove to be a challenge. Specifically, most plans have a calendar plan year and the annual QDIA notice is required at least 30 days in advance of each plan year. Thus, a consolidated mailing of the QDIA and Participant Disclosure Notices would likely need to occur in September-November. Given that the Participant Disclosure Notice is required to include performance as of December 31 of the prior year, many plan sponsors would prefer to furnish the consolidated notices in the first quarter.

In addition to resolving the timing differences, we believe that the duplicate content of the QDIA and Participant Disclosure Notices should be avoided. It does not make sense to have identical content in two annual notices. If the Department believes the QDIA notice requires greater prominence, it could require that the QDIA content be on the first page of the combined disclosure.

Finally, we continue to believe that participants will be confused by the Department's Proposal to require a statement that the participant or beneficiary could lose money when investing in a TDF and that there is no guarantee that an investment would provide adequate retirement income. As mentioned in our previous letters to the Department, this statement applies to virtually all investment alternatives. As the Department is aware, the Participant Disclosure Regulation requires general disclosure about the risk of investing on the comparative chart as well specific risk disclosure for each designated investment alternative to be available on a website. Requiring additional risk disclosure related to TDFs, but not other investment options, could be misleading and puts unnecessary emphasis on a particular type of designated investment alternative. As noted above, this is true of the standardized measure of risk as well. If the Department concludes that such a disclosure is required, it should appropriately indicate that the participant or beneficiary could lose money with any variable return investment option and that no investment option can provide a guarantee that it will provide adequate retirement

[7] Though not required by the Disclosure Regulation, Fidelity has also included the plan-related information required along with the investment-related information in its Notice template, which results in a longer Participant Disclosure Notice. We understand that other vendors followed a similar approach.

income. If the QDIA and Participant Disclosure Notices were permitted to be consolidated, the statement could appear on the first page and reference the other investment options listed on the comparative chart.

***Service providers will need sufficient time to make necessary system enhancements to support modifications required by amendments of the QDIA and Participant-Level Disclosure regulations.***

The modifications to the QDIA and Participant Disclosure Notices required by the final rule will require investment managers to develop new content for inclusion and plan service providers will need to enhance their systems to receive, store and populate such content in these notices. Our continued experience with preparing Participant Disclosure Notices has shown that this development and coordination requires significant time and effort. Further, plan sponsors and service providers are dependent on investment managers providing such information. Given the complexities of this development, the effective date of the Department's amendments should both follow the SEC rule's effective date and should apply to annual QDIA and Participant Disclosure Notices delivered no earlier then one year from publication of the final rules.

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We appreciate the opportunity to submit these comments for your consideration. Fidelity would be pleased to provide any additional information or respond to any questions that the Department may have.

Sincerely,

Ralph C. Derbyshire
Senior Vice President and
Deputy General Counsel

cc: The Honorable Mary Jo White, Chair, Securities and Exchange Commission
The Honorable Luis A. Aguilar, Commissioner, Securities and Exchange Commission
The Honorable Daniel M. Gallagher, Commissioner, Securities and Exchange Commission
The Honorable Kara M. Stein, Commissioner, Securities and Exchange Commission
The Honorable Michael S. Piwowar, Commissioner, Securities and Exchange Commission
Mr. Joseph Dear, Chairman, Securities and Exchange Commission Investor Advisory Committee
Mr. Norm Champ, Director, Securities and Exchange Commission Division of Investment Management