The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

WRITTEN STATEMENT OF THE INVESTMENT COMPANY INSTITUTE

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TO

2024 ERISA ADVISORY COUNCIL
Qualified Default Investment Alternatives (QDIAs) - Start to Finish, Default to Payout

The Investment Company Institute (ICI)[1] appreciates the opportunity to submit this written testimony to the ERISA Advisory Council. We appreciate the Council studying the effectiveness of qualified default investment alternatives (QDIAs) in both the accumulation and payout phases of retirement—examining the QDIA framework beginning with the Department of Labor's (the "Department's") issuance of final rules on QDIAs in 2007 through changes prompted by the SECURE Act (e.g., lifetime income fiduciary relief) and the SECURE 2.0 Act (e.g., automatic enrollment mandate for new plans).[2] Among the various types of QDIAs, target date funds (TDFs) have proven the most popular, and thus we provide an in-depth analysis of the offering and use of TDFs. Based on the witness testimony at the Council's July and September 2024 hearings, the written testimony submitted in conjunction with the hearings, and the Council's discussion during the hearings, the consensus appears to be that amendments to QDIA regulations are not needed at this time. We agree. Our position stems from analysis of the retirement plan marketplace and discussions with several of our members, which indicate no need for changes to the current QDIA rules. Additionally, we found rapid innovation in the range of products intended to help plan participants facilitate the drawdown phase of retirement.

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $37.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional $8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] See Issue Statement available at https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2024-qdia-issue-statement.pdf.

Summary of Testimony

As Sarah Holden noted during the public comment period during the hearing on September 10, 2024, in our review of industrywide data and discussions with several members we find that:

1. **The QDIA rules are working and are not in need of change at this time.** Plan sponsors and financial services providers are innovating in the design of products and services offered as QDIAs. With technological advances, increasingly cost-effective personalization within the current QDIA framework is feasible.

2. **Often chosen to be the QDIA, target date funds offer a cost-effective, professionally managed diversified portfolio that rebalances over time.** Although rising to be a significant share of 401(k) plan assets, target date funds are not a monolithic investment. Indeed, target date funds hold an array of funds and securities across investment objectives (e.g., stocks versus bonds), sectors (e.g., domestic versus global) and styles (e.g., passive versus active). A popular QDIA, target date funds are commonly offered as mutual funds or collective investment trusts (CITs), typically in a fund of funds, or CIT of CITs structure. Mutual fund target date funds are regulated under the Investment Company Act of 1940, including with respect to the selection of underlying funds, and target date fund managers, who are subject to a fiduciary duty under the Investment Advisers Act of 1940, take that selection responsibility seriously and thoughtfully. CIT target date funds are an institutional product falling under banking regulation, and CIT trustees and investment managers are subject to fiduciary duties under ERISA.

3. **Plan sponsors and financial services firms are innovating to include the option of a variety of retirement income possibilities within QDIAs.** These solutions range from systematic withdrawal/payout plans, to guaranteed income for a fixed time period, to deferred annuities, to immediate lifetime annuities. Many plan sponsors are interested in providing access and choice to their participants, sometimes including the income option inside the plan, sometimes outside, and in many cases relying on the SECURE Act's fiduciary safe harbor for selecting annuity providers.

4. **It would not be appropriate, and indeed, could be detrimental to default participants into an irrevocable retirement income decision.** Irrevocably defaulting any portion of participants' accounts into a retirement income product or feature is not advisable because of:
    1. the heterogeneity of workers at the point of retirement;
    2. the important and varying role of Social Security in providing income replacement across the income distribution; and
    3. the plan sponsor's limited insight into the worker's entire household situation and balance sheet.

5. **It would be a misstep to recommend that the Department make prescriptive changes that would stunt the innovation currently working to meet participants' needs under the current regulatory framework.**

1. The QDIA rules are working and are not in need of change at this time.

The Department's QDIA regulation, finalized in 2007, is working well and is not in need of change. Prior to the adoption of the QDIA regulation, many employers used capital preservation products such as money market or stable value funds (Figure A1)—which tend to underperform the market over time—as default vehicles in their plans to avoid liability for losses in these accounts. For employees defaulted into such a product early or mid-way in their careers, who tend to stay invested in the default investment, this often had a significant negative impact on their ability to accumulate adequate retirement savings. The Department designed the QDIA regulation to encourage plan sponsors to select default investments that have risk and return characteristics appropriate for long-term retirement investing.

While the Department identified three categories of investment alternatives (lifecycle funds, balanced funds, and managed account programs) that it determined appropriate for achieving meaningful retirement savings over the long-term for participants, the Department did not define the categories in an overly prescriptive way. Rather, the approach the Department took in defining QDIAs was intended to be "sufficiently flexible to accommodate future innovations and developments in retirement products."[3] This approach has made the QDIA regulation one of the Employee Benefits Security Administration's (EBSA's) greatest success stories.[4] As illustrated by the data below, the use of target date funds has increased dramatically since 2007 (see Section 2), thanks in large part to the QDIA regulation. This has generally resulted in more appropriate asset allocation in DC plan accounts by providing most DC plan participants access to a professionally managed diversified portfolio that rebalances over time.[5]

While QDIA product development initially focused on the asset accumulation phase, today innovation is rapidly expanding to provide a multitude of solutions for the retirement income phase (as described in Section 3). With technological advances, increasingly cost-effective personalization within the current QDIA framework is feasible. The flexibility in the QDIA regulation is still working as intended, allowing plan sponsors and financial services providers to continue to innovate in the design of products and services offered as QDIAs. As described further in Section 3, incorporating retirement income solutions as optional features within QDIAs is becoming more common. Any QDIA with a retirement income feature still would need to comply with the QDIA requirement that participants be able to move out of the default

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[3] See preamble to *Default Investment Alternatives Under Participant Directed Individual Account Plans*, 89 Fed. Reg. 60452 at 60460 (October 24, 2007).

[4] During the EBSA Update portion of the July 9, 2024 meeting of the Council, an EBSA staff member described the QDIA regulation as "one of EBSA's greatest successes," noting that it demonstrates the power of defaults, and effectively got participants into more appropriate long-term investments.

[5] See Figure 8 in Holden, Bass, and Copeland, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2022," *ICI Research Perspective* 30, no. 3 (April 2024), available at https://www.ici.org/system/files/2024-04/per30-03.pdf.

investment at least once in any 90-day period.[6] An important aspect of the QDIA framework is the need to retain choice for participants who want to move their assets out of the default investment.

In conjunction with the Council's 2018 study of the topic "Lifetime Income Solutions as a Qualified Default Investment Alternative (QDIA) – Focus on Decumulation and Rollovers," the Council considered various ideas for encouraging greater use of annuities as part of QDIAs. Annuities and other guaranteed income products can be a valuable component of a retirement income strategy for many retirees, depending on the individual's goals and circumstances. In this regard, one idea considered in 2018 was a proposal to modify the QDIA safe harbor to permit limits on rights of transferability, which would better accommodate the use of certain annuities and guaranteed income products within QDIAs.[7] In our written testimony to the Council in 2018, we explained why this modification would be detrimental to plan participants.[8]

The QDIA's transferability requirement preserves participant direction and choice—two important tenets of ERISA section 404(c). The QDIA safe harbor recognizes that today's auto-enrolled workers, placed in a default investment, may become tomorrow's actively engaged participants, pursuing their own retirement savings strategy among their plans' options. This condition of the QDIA regulation ensures those workers will have such opportunities.

We continue to believe that modifications to the regulation to permit QDIAs to impose restrictions on transferability, effectively allowing participants to be locked into a retirement income decision by default, (a) is unnecessary in light of existing DOL guidance clarifying that annuities can be used as investments within a QDIA, (b) is inconsistent with the policy goals behind the QDIA safe harbor and the general ERISA section 404(c) safe harbor relieving fiduciaries from liability for the investment decisions made by individual participants and beneficiaries, and (c) could be harmful to those who are locked into such products.

For these reasons, we urged the Council in 2018 not to recommend changes to the QDIA safe harbor to permit restrictions on a participant's ability to move out of a QDIA beyond what is currently allowed. It is also notable that in the July and September hearings of this year, witnesses generally did not advocate for a change in the QDIA regulations. This is further evidence that the current rules remain flexible enough to allow innovation for decumulation strategies. In Section 4, we explore various factors that must be considered in any examination of the role of default schemes or policies in the retirement income decision phase.

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[6] The QDIA rule includes several conditions designed to protect participants whose assets are invested by default. One of the most important requirements is transferability and liquidity—giving defaulted participants an opportunity to direct their investments out of the QDIA at least once in any three-month period.

[7] Specifically, the suggestion was to permit "reasonable liquidity and transferability conditions consistent with income guarantees."

[8] See pages 29 to 37 of Sarah Holden and Shannon Salinas, "Lifetime Income Solutions as a Qualified Default Investment Alternative (QDIA)," Statement of the Investment Company Institute Before the ERISA Advisory Council (August 15, 2018), available at https://www.ici.org/pdf/18_erisa_qdia.pdf.

2. Often chosen to be the QDIA, target date funds offer a cost-effective, professionally managed diversified portfolio that rebalances over time.

Given the prevalence of target date funds as both QDIAs and generally available investment options in defined contribution (DC) plans, including 401(k) plans, this section explores plan offering and participant use of target date funds. Financial services firms offer a variety of target date funds, with glide paths differing across providers for a given target date. Plan sponsors have flexibility to choose the target date fund suites most appropriate to their workforce. This flexibility is important because DC plan participants represent diverse demographic and financial characteristics.

A. 401(k) plan participants represent a range of ages, job tenures, incomes, and ethnic backgrounds.

401(k) plans, the most common DC plan, held $7.4 trillion in assets as of December 31, 2023, in more than 710,000 plans, on behalf of about 70 million active participants and millions of former employees and retirees.[9]

These plan participants represent diversity in demographic composition, hailing from all ages, job tenures, incomes, and race/ethnicities. At year-end 2022, 63 percent of active 401(k) plan participants were younger than age 50 (Figure A2). Nearly half of active 401(k) plan participants had five or fewer years of job tenure (Figure A2). Among US households with DC retirement plan accounts in 2023, more than four in 10 had moderate incomes: 43 percent had annual incomes between $25,000 and $99,999; 52 percent had incomes of $100,000 or more and 5 percent had incomes less than $25,000 (Figure A3). In addition, the population of DC-owning households is roughly similar to all US households in its diversity: 30 percent of DC-owning households were Asian, Hispanic, or African American, compared with 35 percent of all US households in 2023 (Figure A4). Considering these diverse demographic characteristics, it is important to remember that plan fiduciaries know their employees and are in the best position to select a target date fund suite that aligns with the characteristics of the plan's participant population.[10]

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[9] See Investment Company Institute, "401(k) Resource Center," available at https://www.ici.org/401k. As of mid-2024, 401(k) plans had nearly $8.0 trillion in assets. See Investment Company Institute, "Quarterly Retirement Market Data," available at https://www.ici.org/research/stats/retirement.

[10] The Department itself tells fiduciaries that, in selecting a target date fund: "You should consider how well the TDF's characteristics align with eligible employees' ages and likely retirement dates. It also may be helpful for plan fiduciaries to discuss with their prospective TDF providers the possible significance of other characteristics of the participant population, such as participation in a traditional defined benefit pension plan offered by the employer, salary levels, turnover rates, contribution rates and withdrawal patterns." See *Target Date Retirement Funds - Tips for ERISA Plan Fiduciaries*, EBSA (February 2013), available at

B. Target date funds are a popular 401(k) plan investment option and QDIA.

Target Date Funds Are an Increasingly Popular, Innovative Investment Choice

Target date funds—or lifecycle funds—are designed to offer a convenient way to invest for someone expecting to retire around a particular date. They provide professionally managed, cost-effective asset diversification among equities, bonds, and other investments (both domestic and international), and automatically rebalance their assets over time, following a disclosed "glide path." A target date fund typically rebalances its portfolio to become less focused on growth and more focused on income as it approaches and passes its target date, which is usually indicated in the fund's name. Target date funds can be organized as mutual funds, collective investment trusts (CITs),[11] or separate accounts. Target date funds have grown considerably since they were first created in 1994. At the end of June 2024, target date fund assets held in mutual funds and CITs reached nearly $3.8 trillion—about evenly split between mutual funds and CITs (Figure 1).

Although they tend to be reported as one investment category, target date funds provide investors access to index and active investing,[12] in domestic and international stocks, bonds, and other investments[13] through high-quality underlying funds,[14] typically using a fund-of-funds structure where the target date fund manager builds a portfolio of other funds.[15]

https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds-erisa-plan-fiduciaries-tips.pdf.

[11] See discussion of mutual fund and CIT target date fund structures in Appendix B: Target Date Funds Have Several Investor Safeguards.

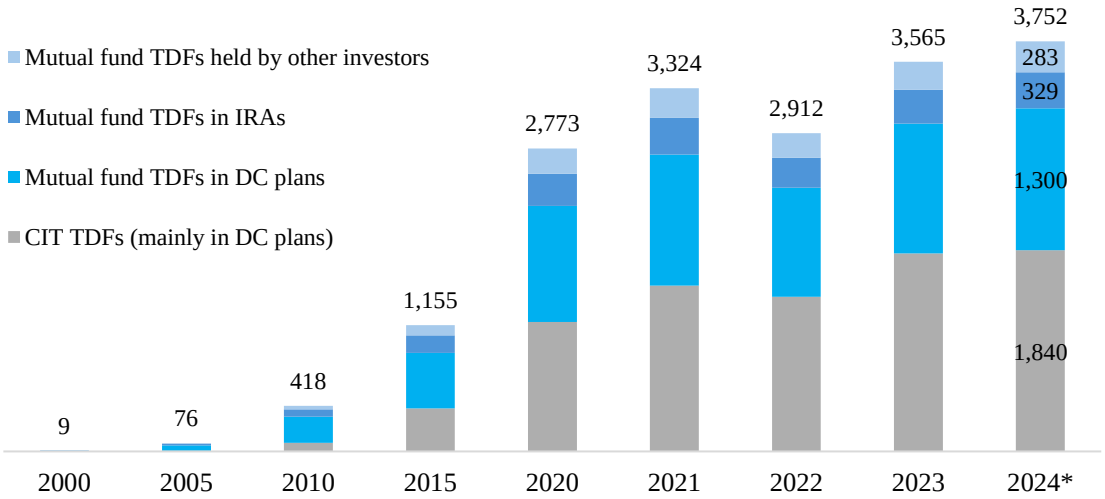
[12] In the case of target date mutual funds, 72 percent held a mix of active and index funds, 16 percent held active funds only, and 12 percent held index funds only (ICI tabulations of SEC Form N-PORT data centered around June 2024). See Investment Company Institute, "Quick Facts on Target Date Funds," available at https://www.ici.org/system/files/2024-10/quick-facts-tdfs.pdf.

[13] In the case of target date mutual fund assets, 41 percent were invested in domestic equity, 27 percent in world equity, 25 percent in bonds, and 7 percent in other investments (ICI tabulations of SEC Form N-PORT data centered around June 2024). See Investment Company Institute, "Quick Facts on Target Date Funds," note 12, supra.

[14] Target date mutual funds tend to hold underlying funds that have high Morningstar ratings. See Investment Company Institute, "Quick Facts on Target Date Funds," note 12, supra. Additionally, target date mutual funds perform as well as other mutual funds on a risk-adjusted basis. See Qureshi, Duvall, and Antoniewicz, "The Fact(or)s Matter When Measuring TDF Performance," *ICI Viewpoints* (October 14, 2024), available at https://www.ici.org/viewpoints/24-view-tdf-performance; and Qureshi, "Accounting for International Exposure in Mutual Fund Performance Evaluation: Evidence from Target Date Funds," SSRN Working Paper (revised August 2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4618120.

[15] ICI data find that essentially all target date mutual funds are funds of funds.

Figure 1
Target Date Fund Asset Growth Reflects Their Rising Use in DC Plans
Billions of dollars, period-end



*Data in 2024 are as of June.
Sources: Investment Company Institute and Morningstar

Defined Contribution Plans Hold the Majority of Target Date Fund Assets

The substantial growth in target date funds stems primarily from their use in retirement accounts, particularly in employer-sponsored DC plans, which include 401(k) plans. As of June 2024, DC plans held 84 percent of all target date fund assets and 68 percent of target date mutual fund assets (Figure 1).[16] Target date funds' inclusion in retirement plans as a QDIA beginning in 2007 has contributed to this growth, although their offering and use is more widespread than just the automatic enrollment context.[17] Recognizing that not all retirement savers are do-it-yourself investors, 401(k) plans often include target date funds as an investment option in their investment lineup.

C. 401(k) plans offer a full menu of diversified investment options, providing a range of risk and return.

Designed with retirement savers in mind, target date funds mainly are held in employer-sponsored DC plan accounts, including 401(k) plans.[18] Nearly nine in 10 401(k) plans include

[16] IRA investors held 17 percent of target date mutual fund assets in June 2024 (Figure 1). See also, Table 25 in Investment Company Institute, "Quarterly Retirement Market Data," note 9, supra.

[17] See BrightScope and Investment Company Institute, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2021*, San Diego, CA: BrightScope and Washington, DC: Investment Company Institute (August 2024), available at https://www.ici.org/system/files/2024-08/24-ppr-dcplan-profile-401k.pdf; and Holden, Bass, and Copeland 2024, note 5, supra.

[18] Target date mutual funds also are held in IRAs. IRA target date mutual fund investors tend to concentrate their account balance in one target date mutual fund. See Investment Company Institute, "Quick Facts on Target Date

target date funds in their investment lineups and more than two-thirds of 401(k) plan participants hold target date funds in their accounts. 401(k) plan target date fund investors tend to concentrate their account balance in one age-appropriate target date fund.

Participant-directed 401(k) plans are designed to allow participants to choose from investment options that are prudent, reasonably priced, diversified, and cover a range of investment risk and return options.[19] A plan fiduciary must select the investment options to be offered in a 401(k) plan prudently and solely in the interests of plan participants and beneficiaries. Participants are typically allowed to invest their accounts in any of the available options.[20] Plan fiduciaries are responsible for the selection and monitoring of the plan's investment options, but they can avoid liability for losses resulting from participants' exercise of investment control by designing the plan to meet certain regulatory requirements. These requirements include giving participants control over their assets, sufficient information about the investments, adequate opportunity to diversify their holdings, and offering at least three diversified investment options with materially different risk and return characteristics.[21] Plans generally must allow transfers among the diversified investment options at least quarterly.[22]

On average, large 401(k) plans in the BrightScope Defined Contribution Plan Database offered participants 28 investment options in 2021.[23] Because plans may offer suites of target date funds—with options tailored to multiple anticipated retirement dates—an adjusted number that counts a suite of target date funds as one investment option finds, on average, large 401(k) plans offer 20 investment options according to this target date fund–adjusted number.

Fund Use in Retirement Plans," available at https://www.ici.org/system/files/2024-10/quick-facts-tdfs-retirement-plans.pdf.

[19] For a discussion of the services used in 401(k) plans, see Holden, Johnson, and Chism, "The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2023," *ICI Research Perspective* 30, no. 6 (July 2024), available at https://www.ici.org/system/files/2024-07/per30-06.pdf.

[20] According to DOL Form 5500 data for plan year 2022, 96 percent of active 401(k) plan participants are in plans that permit them to direct all investments in their plans; another 3 percent are in plans that permit them to direct a portion of the investments, and only 1 percent are in plans that do not allow them to direct any investments. See Table D5(b) in US Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Abstract of 2022 Form 5500 Annual Reports* (Data Extracted on 7/8/2024, Version 1.0) (September 2024), available at https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2022.pdf.

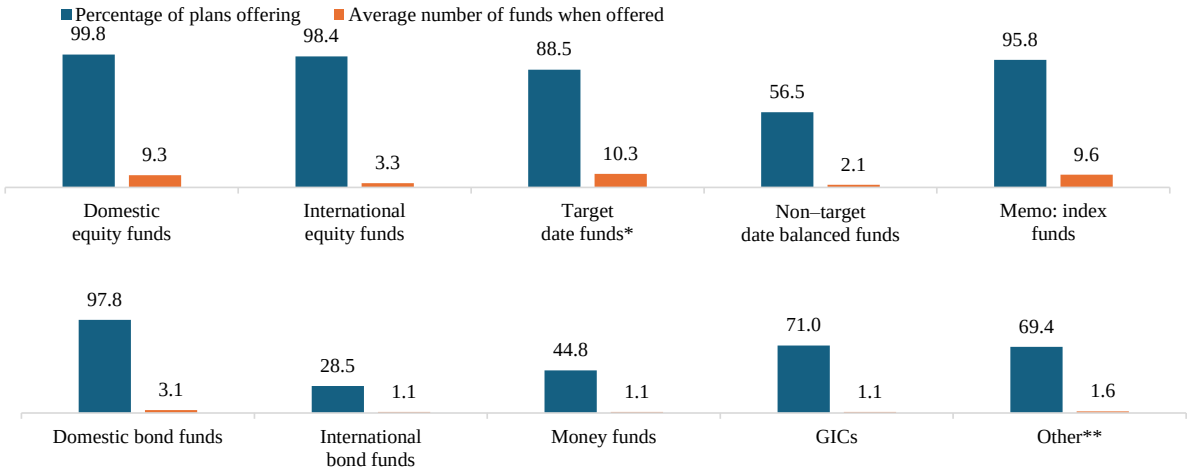
[21] Although 401(k) plans can offer company stock or any individual stock, neither would qualify as one of the three core options.

[22] In practice, most 401(k) plan participants have daily transferability. Plan Sponsor Council of America (PSCA) finds that 82 percent of the plans they surveyed indicated they allowed participants to initiate fund transfers daily. See Plan Sponsor Council of America, *66th Annual Survey of Profit Sharing and 401(k) Plans: Reflecting 2022 Plan Experience*. Chicago: Plan Sponsor Council of America (2023).

[23] See Exhibit 2.1 in BrightScope and Investment Company Institute 2024, note 17, supra.

By either measure, the investment options offered by large 401(k) plans represent a wide variety of investments. Nearly all plans offered at least one domestic equity fund, international equity fund, and domestic bond fund, and nearly nine in 10 plans offered target date funds (Figure 2). On average, large 401(k) plan investment lineups included about 13 equity funds (both domestic and international, and both index and active), four bond funds (mainly domestic, and both index and active), and 10 target date funds when they offered those fund types. Plans also offered money funds, GICs, and other options. These investments were not offered as widely and were often included as the single choice in that investment type.

Figure 2
401(k) Plan Lineups Offer Many and a Variety of Investment Options
Percentage of plans offering and average number of investment options among plans offering the specified investment option, 2021



* A target date fund typically rebalances its portfolio to become less focused on growth and more focused on income as it approaches and passes the target date of the fund, which is usually included in the fund's name.
** Other includes commodity funds, real estate funds, and individual stocks (including company stock) and bonds, but each separate option is counted as a unique investment option.
Note: The sample is 60,424 plans with 62.0 million participants and $6.8 trillion in assets. Participant loans are excluded. Funds include mutual funds, collective investment trusts, separate accounts, and other pooled investment products. BrightScope audited 401(k) filings generally include large plans, those with 100 participants or more. Plans with fewer than four investment options or more than 100 investment options are excluded from BrightScope audited 401(k) filings for this analysis.
Source: BrightScope Defined Contribution Plan Database; see Exhibit 2.6 in *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2021* (August 2024), available at https://www.ici.org/system/files/2024-08/24-ppr-dcplan-profile-401k.pdf.

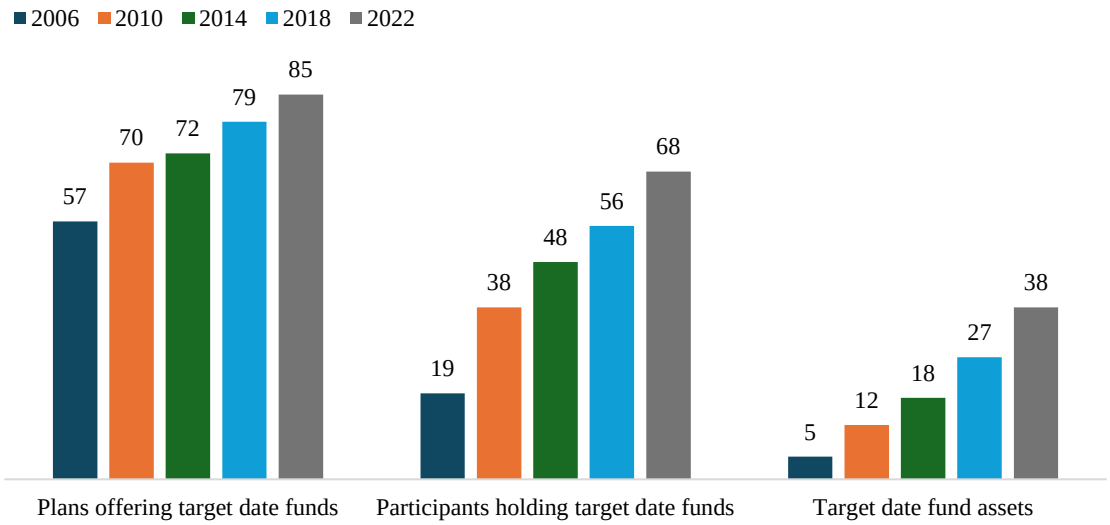
BrightScope data also indicate that target date fund offering has risen over time and occurs across all plan sizes. Since 2006 (the earliest data in the BrightScope database), large 401(k) plans have become more likely to offer target date funds. In 2021, 89 percent of large 401(k) plans in the BrightScope database offered target date funds, compared with 58 percent in 2009

and 32 percent in 2006.[24] The share of plan assets invested in these funds also increased, rising from 3 percent in 2006 to 8 percent in 2009 and 29 percent in 2021.[25]

Participant Use of Target Date Funds Has Risen in 401(k) Plans

EBRI/ICI 401(k) data also find that the use of target date funds in 401(k) plans has risen over time. Data from the EBRI/ICI 401(k) database indicate that at year-end 2022, 85 percent of 401(k) plans had target date funds in their investment lineups, compared with 57 percent at year-end 2006 (Figure 3). An additional insight from the EBRI/ICI 401(k) database relates to participant use of target date funds: 401(k) plan participants have embraced target date fund investing, whether as their own choice or through the acceptance of a default allocation. At year-end 2022, 68 percent of 401(k) plan participants held target date funds, and target date fund assets were 38 percent of 401(k) plan assets.[26]

Figure 3
Role of Target Date Funds in 401(k) Plans Has Increased over Time
Target date funds' market share; percentage of 401(k) market, year-end



Note: Funds include mutual funds, bank collective trusts, and life insurance separate accounts.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

[24] Smaller plans were more likely than larger plans to add target date funds to their investment lineups between 2006 and 2021. Smaller plans also experienced the largest increase in the share of plan assets invested in target date funds. See Exhibits 2.10 and 2.11 in BrightScope and Investment Company Institute 2024, note 17, supra.

[25] Id.

[26] See Holden, Bass, and Copeland 2024, note 5, supra.

Target Date Fund Use Is Higher Among Younger 401(k) Plan Participants

Younger participants have higher use of target date funds, likely having been hired more recently and therefore more likely to have been offered or defaulted into target date funds. At year-end 2022, 77 percent of 401(k) plan participants in their 20s held target date funds, compared with 61 percent of 401(k) plan participants in their 60s (Figure A5). Target date funds accounted for about two-thirds of 401(k) plan account assets held by 401(k) participants in their 20s, compared with about one-third among 401(k) participants in their 60s.

401(k) Target Date Fund Investors Are on the Right Track

As highlighted above, a majority of 401(k) plan participants hold target date funds (Figure 3). These investors may have selected target date funds on their own, or allowed themselves to be defaulted into target date funds.[27] Policymakers have inquired whether these 401(k) target date fund investors are using target date funds correctly. To determine this, EBRI/ICI analysis of 401(k) plan participants holding target date funds explored whether 401(k) target date fund investors are:

(1) using target date funds as a comprehensive portfolio solution;
(2) holding one target date fund; and
(3) holding an age-appropriate target date fund.

401(k) Target Date Fund Investors Tend to Concentrate Their Assets in One Age-Appropriate Target Date Fund

Among 401(k) plan participants investing in target date funds at year-end 2018, a majority of their 401(k) plan assets were invested in target date funds, on average, and a majority held more than 90 percent of their account in target date funds.[28] For example, among 401(k) target date fund investors in their 20s, 85 percent of their 401(k) plan assets were invested in target date funds, on average, and 88 percent of them had more than 90 percent of their account invested in target date funds (Figure 4). Concentration in target date funds tended to be lower among older 401(k) target date fund investors. Among 401(k) target date fund investors in their 60s, 56 percent of their 401(k) plan assets were invested in target date funds, on average, and 68 percent of them had more than 90 percent of their account invested in target date funds.

Nearly all 401(k) target date fund investors held one target date fund. Overall, 94 percent of 401(k) target date fund investors held one target date fund, varying little from 97 percent among those in their 20s to 93 percent among those in their 50s and 60s (Figure 4). Nearly all 401(k)

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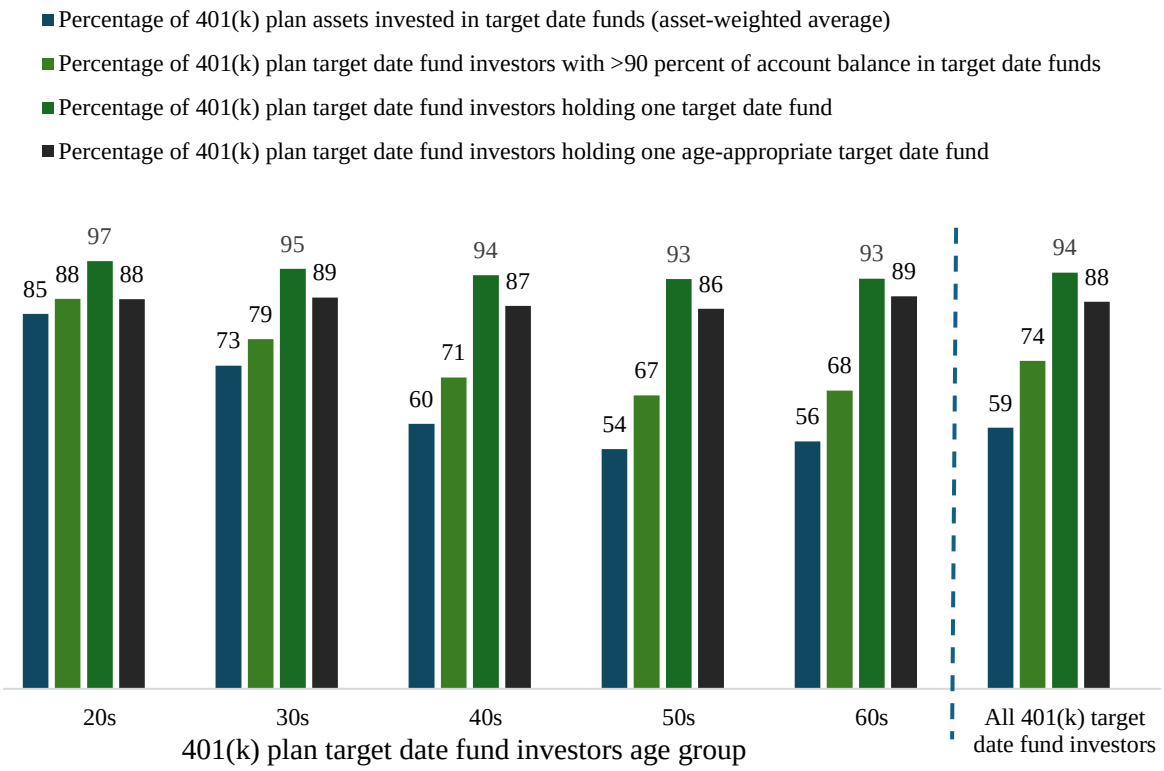
[27] Plan Sponsor Council of America reports that among 401(k) plans with automatic enrollment in 2022, 85 percent used target date funds as the default investment; 6 percent used balanced funds; 3 percent used managed accounts; 2 percent used stable value funds, and 2 percent used money market funds. See Figure A1 in Appendix A and Table 122 in Plan Sponsor Council of America 2023, note 22, supra.

[28] See Holden, VanDerhei, and Bass, "Target Date Funds: Evidence Points to Growing Popularity and Appropriate Use by 401(k) Plan Participants," *ICI Research Perspective* 27, no. 7, and *EBRI Issue Brief*, no. 537 (September 2021), available at https://www.ici.org/files/2021/per27-07.pdf.

target date fund investors holding one target date fund, held the target date fund appropriate to their age, assuming retirement at age 65.[29] As a result, about nine in 10 401(k) target date fund investors held one age-appropriate target date fund. Additionally, 401(k) plan participants tend to invest in equities regardless of their target date fund ownership status (Figure A6).

Figure 4
Vast Majority of 401(k) Target Date Fund Investors Hold One Age-Appropriate Target Date Fund
Among 401(k) plan participants investing in target date funds, year-end 2018



Note: Funds include mutual funds, bank collective trusts, and life insurance separate accounts.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

[29] For an extensive discussion of the determination of 401(k) investors and their age-appropriate fund, see Holden, VanDerhei, and Bass 2021, note 28, supra. It should be noted that the 401(k) target date fund investors not determined to be in an age-appropriate fund may have selected their target date funds based on a different anticipated retirement age, rather than the assumed retirement age of 65. For example, the full retirement age for Social Security claiming for individuals aged 58 or older in 2018 is age 67, so some target date fund investors may be targeting the year they reach 67. Some target date fund investors may have earlier anticipated retirement ages based on their employers' normal retirement age or allowed retirement age based on their occupation (e.g., law enforcement, fire fighters).

3. Plan sponsors and financial services firms are innovating to include the option of a variety of retirement income possibilities within QDIAs.

Plan sponsors and financial services firms are innovating together to include choice for 401(k) plan participants regarding the retirement income phase. Given the popularity and familiarity of target date funds, several financial services firms interviewed indicated that plan sponsors were typically requesting that a retirement income solution be folded into the target date fund framework as an option for participants. ICI members indicated that many plan sponsors requested retirement income solutions be included as an option for their participants. In our discussions with our members, they described several innovative solutions, often using target date funds, and in some instances using managed accounts (noting that technological advances have made increasingly cost-effective personalization within a managed account feasible). Some of these solutions could be used to default participants into an investment in which a portion of the account could be easily converted into an income stream upon an affirmative decision made by the participant. The Council also received information about several of these solutions, as we heard summarized by Council members at the September 10, 2024 hearing. The key takeaway is that there are ways to embed retirement income products or features, including those with guarantees, into QDIAs without making an irrevocable election on behalf of the participant to activate the retirement income feature. This aspect of the QDIA would be left to the participant's choice.

4. It would not be appropriate, and indeed could be detrimental, to default participants into an irrevocable retirement income decision.

Reviewing retirement plan design outcomes and in our work with ICI members, we found that defaults should be limited to situations in which a plan participant can revise or reverse out of the default without expectation of any significant harm or related costs. Consistent with testimony offered to the Council on September 10−12, 2024, ICI members reported that plan sponsors felt that liquidity is a key factor in this regard. Related as well, these firms emphasized that defaults in this area are less obviously appropriate than in the saving and asset allocation decisions. This is because automatic enrollment is easily reversed and especially beneficial in plans containing an employer match. As well, over most timeframes the opportunity costs of saving in cash, or a near-cash equivalent are significant when compared to investing in a broad portfolio, like a target date fund, accounting for participants' general place in the life cycle.[30]

[30] See the Department's argument along these lines included in proposed regulations issued in 2006 (available at https://www.govinfo.gov/content/pkg/FR-2006-09-27/pdf/06-8282.pdf) and final regulations in 2007 (available at https://www.govinfo.gov/content/pkg/FR-2007-10-24/pdf/07-5147.pdf), creating QDIAs. In the proposed rule, the Department notes (at 56806): "The retirement savings problem is also exacerbated by those employees who enroll in their employer's plan, but do not assume responsibility for investment of their contributions, leaving their accounts to be invested in a conservative default investment that over the career of the employee is not likely to generate sufficient savings for a secure retirement."

A significant number of factors play into the length of time participants could spend in any given default option, including: (1) the age and tenure distributions of 401(k) plan participants; (2) whether 401(k) plan participants take affirmative control over their asset allocations; and (3) whether they remain in the DC plan or move their accounts at job separation or retirement. Additionally, actions by the plan sponsor could result in changes to access to the default product, including: (4) changes in recordkeeper or lineup of investment options; and (5) changes to plan design regarding separating participants, which could impact the rollover/remain-in-plan decision over a career or at retirement.

A. Early-career lock-in is particularly problematic for a mobile workforce.

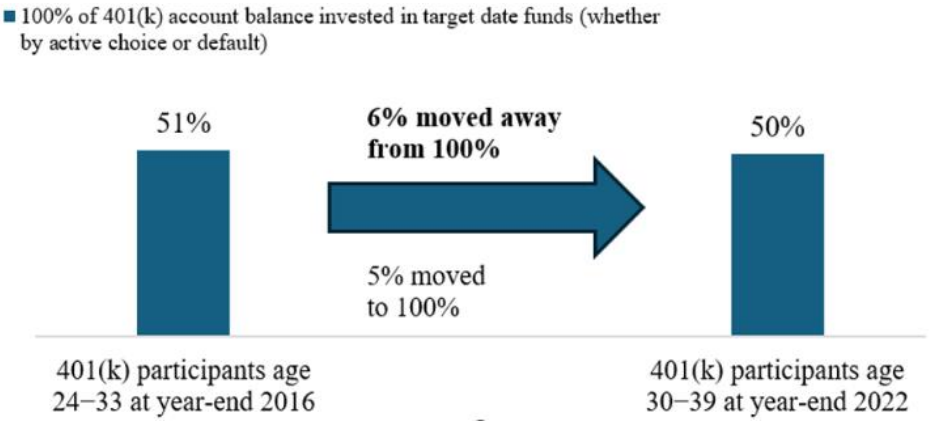
Generally, the lifetime income solutions our members described to us would not be used for participants below a certain age (e.g., those below age 50). This design feature is important because such products may not be appropriate for younger workers for several reasons. At year-end 2022, 40 percent of active 401(k) plan participants were younger than age 40 (Figure A2), which means they have decades before they retire. In addition to concern over liquidity issues with being locked into a slice of an annuity, there are the additional difficulties in that participants' elections to change their asset allocation, job turnover, and plan design changes over time could all result in a trail of small annuities being created over a career.

With regard to changing asset allocation, analysis of a consistent sample of 401(k) plan participants—those with account balances in each year in the EBRI/ICI 401(k) database from year-end 2016 through year-end 2022, shows some movement in target date fund investing over those six years.[31] For example, at year-end 2016, 51 percent of consistent participants age 24 to 33 had 100 percent of their 401(k) plan account invested in target date funds (Figure 5). Sometime over the ensuing six years, 6 percent of this consistent group (or 12 percent of those fully invested in target date funds at year-end 2016) moved away from their 100 percent allocation. Separately, 5 percent of this consistent group moved to a 100 percent allocation, so that by year-end 2022, when they were in their 30s, half of them had 100 percent of their accounts in target date funds.[32] The key takeaway is that even among ongoing 401(k) plan participants, there can be movement out of the target date fund investment.

[31] See Holden, Bass, and Copeland, "What Does Consistent Participation in 401(k) Plans Generate? Changes in 401(k) Plan Account Balances and Asset Allocations, 2016–2022," *ICI Research Perspective* 30, no. 7 (August 2024), available at https://www.ici.org/system/files/2024-08/per30-07.pdf.

[32] See Figure A7 in the appendix for the changes in allocations to target date funds across all age groups of the consistent sample of 401(k) plan participants.

Figure 5
Consistent 401(k) Plan Participants Show Some Movement Away from Target Date Funds
Percentage of consistent 401(k) plan participants in their 30s, year-end 2016 and year-end 2022



Note: Funds include mutual funds, bank collective trusts, life insurance separate accounts, and any pooled investment product primarily invested in the security indicated. The full consistent sample is 2.1 million 401(k) plan participants with account balances at the end of each year from 2016 through 2022. Age group is based on the participant's age at year-end 2022.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

Beyond 401(k) plan participants making asset allocation changes while still participating in the plan, there could be changes in investments resulting from job change. DC plan participants typically have a choice of distribution options.[33] Analysis of Vanguard DC plan recordkeeping data finds that half of terminating participants in their 30s took their account balances out of the plan (Figure 6).[34] Likely reflecting their relatively small balances, 35 percent were either automatically cashed out or chose to take a cash lump sum, while 15 percent were either automatically rolled over, or chose to roll over, to an IRA.[35] These plan design features and participant activities increase the likelihood that a young, defaulted participant will not be holding the default investment option for the rest of their career. Additionally, plan sponsors may change default investments when they change recordkeepers or revisit the plan investment lineup.

[33] See Figure A8 and discussion in Appendix A.

[34] See Figure 117 in Clark, *How America Saves 2024*, Valley Forge, PA: The Vanguard Group, Vanguard Center for Retirement Research (June 2024), available at https://institutional.vanguard.com/insights-and-research/report/how-america-saves.html.

[35] Vanguard data indicate that 82 percent of DC plans in their recordkeeping system automatically cash-out if the balance is less than $1,000 and automatically roll over if the balance is between $1,000 and $5,000. See Figure 113 in Clark 2024, note 34, supra.

Figure 6
Half of Terminating Participants in their 30s Took Their DC Plan Balances
Vanguard DC plans; participants in their 30s or 60s with termination dates in 2023

	30s	60s
Small balance <$1,000 automatically cashed out Participant chose to cash lump sum	35%	24%
Automatically roll over balances between $1,000 and $5,000 Participant chose to roll over to an IRA	15%	30%
Participant kept balance in the plan	50%	44%
Installment payments	0%	1%

Note: A de minimis share of terminating participants chose a combination of rollover and cash.
Source: Vanguard *How America Saves 2024*

Households Research the Rollover Decision

When considering a default into a retirement income solution, it is important to remember that many plan participants eventually decide to roll over their DC plan account into an IRA. Traditional IRA–owning households with rollovers[36] cite multiple reasons for rolling over their retirement plan assets into traditional IRAs. The three most common primary reasons for rolling over were not wanting to leave assets behind at the former employer, wanting to consolidate assets, and wanting more investment options (22 percent, 21 percent, and 17 percent of traditional IRA–owning households with rollovers, respectively).[37]

Each rollover decision is unique—as households must weigh the investment options and account access available in their particular DC plan versus the options and access available in the IRA. Traditional IRA–owning households generally researched the decision to roll over money from their former employer's retirement plan into a traditional IRA. Sixty-three percent consulted multiple sources of information—the most common source of information was professional financial advisers, who were consulted by 63 percent of traditional IRA–owning households with rollovers.[38] Thirty-four percent of traditional IRA–owning households with rollovers relied on information provided by their employers, with 26 percent using printed materials from their employers as a source of information and 20 percent consulting online materials from their employers. Forty-four percent of traditional IRA–owning households with rollovers relied on information provided by financial services firms, with 22 percent using printed materials

[36] In mid-2023, 62 percent of US households owning traditional IRAs had traditional IRAs that included rollover assets. With their most recent rollovers, the vast majority of these households (86 percent) transferred the entire retirement plan account balance into the traditional IRA. See Holden and Schrass, "The Role of IRAs in US Households' Saving for Retirement, 2023," *ICI Research Perspective* 30, no. 1 (February 2024), available at https://www.ici.org/system/files/2024-02/per30-01.pdf.

[37] See Figure 5 in Holden and Schrass 2024, note 36, supra.

[38] See Figure 6 in Holden and Schrass 2024, note 36, supra.

provided by financial services firms and 25 percent using online materials from financial services firms. Twenty-six percent consulted IRS rules or publications.[39]

B. Social Security provides retirees a stream of lifetime income, and household survey data find retired households maintain their wealth standing through many years into retirement.

When contemplating the appropriate decision regarding the distribution of retirement plan assets, it is important to comprehensively consider retirement resources, which allow workers to reallocate lifetime resources from their working years to their retired years. US retirement resources include a strong annuitized base, Social Security, which is progressive and provides high replacement rates for lower-income workers (Figure A9). When including all retirement resources, it is clear that the majority of near-retiree US households are highly annuitized outside their DC plans.[40] Academic research suggests that individuals entering retirement who need more annuity income should first consider delaying claiming Social Security before purchasing an annuity in the market.[41] In addition to regular income, most households want access to resources in times of unexpected need, and required minimum distributions (RMDs) are a reasonable way to produce a lifetime income stream while still maintaining access to the account balance. Most retirement savers steward their accumulations to and through retirement. Households having difficulty in retirement typically had difficulty while working, and promoting annuitization will not solve the problem of limited lifetime resources.

Analysis of Health and Retirement Study (HRS) data finds that Social Security plays a fundamentally important and complementary role in the US retirement system.[42] Nevertheless, people largely hold sufficient wealth to maintain their relative standards of living.[43] However, a range of experiences does exist in retirement, including hardship.[44] Investigating deciles of the wealth distribution, which help to control for declines in income-based wealth measures over

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[39] See Figures 6 and A8 in Holden and Schrass 2024, note 36, supra.

[40] See Investment Company Institute, "The Myth of Under-Annuitization: Managing Income and Assets in Retirement," *ICI White Paper* (April 2020), available at https://www.ici.org/system/files/attachments/20_ppr_annuitization.pdf.

[41] See discussion in Investment Company Institute 2020, note 40, supra.

[42] The paper investigates how resources accumulated in working years are managed over retirement using public HRS data representing 15.2 million seniors in the United States. Building wealth estimates from specific balance sheet components: Social Security, DB and DC pension, IRA, annuity, net home equity, and other assets. More comprehensive estimates of DC wealth are constructed using detailed data on current balances from prior employment. See Holden and Seligman, "Do People Successfully Manage Their Nest Eggs Through Retirement? Evidence from the Evolution of US Household Balance Sheets," SSRN Working paper, (June 2023), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4470865.

[43] For a literature review on this topic, see Holden and Seligman 2023, note 42, supra.

[44] Id.

time, those experiencing hardship do not tend to fall from high- or middle-wealth deciles to lower ones as they age, but instead tend to be enduring longstanding hardship that started before retirement.[45]

C. Defaults can be detrimental when a population is heterogeneous in its needs.

Though some research has suggested that individuals should annuitize more of their retirement account balances as a means of eliminating the risk of outliving their resources, whether and how much a household should annuitize is broadly debated.[46] A prominent behavioral economist recently noted that with regard to the retirement income decision, "there's no one-size-fits-all default that works for a lot of people."[47] In fact, most Americans already have a significant share of their wealth in the form of an annuity through Social Security or alternative public-sector pension plans.

Against this backdrop, ICI surveyed Americans' views about retirees' management of their assets and income in retirement.[48] In fall 2023, about nine out of 10 Americans agreed that retirees should be able to make their own decisions about how to manage their own retirement assets and income[49] and about three-quarters disagreed that retirees should be required to trade a portion of their retirement accounts for a fair contract promising them income for life (Figure A10).[50]

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[45] Id. Similarly, focusing on the evolution of wealth in retirement, earlier research finds that households at risk of financial difficulty in very late retirement typically experienced financial difficulty before retirement. See Poterba, Venti, and Wise, "Longitudinal Determinants of End-of-Life Wealth Inequality," NBER Working Paper, No. 23839 (May, revised), Cambridge, MA: National Bureau of Economic Research, (2018), available at https://www.nber.org/papers/w23839.

[46] For a review of the research in this area, see Investment Company Institute, 2020, note 40, supra.

[47] See Brigitte Madrian remarks at "Adapting ERISA: Navigating Technological, Economic, and Workforce Changes," ERISA 50th Anniversary Symposium (September 12, 2024), 3:15:00 minutes into the symposium, available at https://vimeo.com/1010651474/72f691055d?share=copy.

[48] See Holden, Schrass, Bogdan, and Seligman, "American Views on Defined Contribution Plan Saving, 2023," *ICI Research Report* (February 2024), available at https://www.ici.org/system/files/2024-02/24-ppr-dc-plan-saving.pdf. For the many years of this survey effort, see https://www.ici.org/research/retirement/us-views.

[49] See Figure 4 in Holden, Schrass, Bogdan, and Seligman 2024, note 48, supra.

[50] Surveying consumer preferences regarding annuitization is difficult because the subject matter is complicated and may not be salient at the current time for many households. In addition, academic research has shown that word choice in surveys on annuities has a dramatic impact on the perceived desirability of the annuity option. To present an annuity in a neutral to positive light, ICI indicated that only a *portion* of the account would be converted using a *fair* contract to provide *income for life* (emphasis added). For additional discussion and supporting research references, see Holden, Schrass, Bogdan, and Seligman 2024, note 48, supra.

5. It would be a misstep to recommend that the Department make prescriptive changes that would stunt the innovation currently working to meet participants' needs under the current regulatory framework.

As DC plans' use of automatic enrollment has increased, the QDIA regulations have taken on a significant importance. And that importance is likely to increase as automatic enrollment becomes mandatory for new plans beginning next year.[51] As discussed above, in drafting the QDIA regulations, the Department intentionally defined QDIAs to be "sufficiently flexible to accommodate future innovations and developments in retirement products."[52] An important component of this flexibility, the QDIA regulation includes several conditions designed to protect participants whose assets are invested by default.[53] Over the 17 years since their adoption, that approach has been successful and has proven flexible enough to accommodate ongoing innovation, including in innovations in the payout phase. Reflecting on all presented above, we conclude that modification of the regulation is not needed; could have the unintended consequence of stifling this ongoing innovation; and could work against the good intentions of the drafters of the QDIA regulation, undoing related design benefits from that work.

We thank the Council for allowing us to share our research and views on this important topic.

[51] As the Council notes, section 101 of the SECURE 2.0 Act will require newly established 401(k) plans and 403(b) annuity contracts to automatically enroll participants, effective for plan years beginning after December 31, 2024.

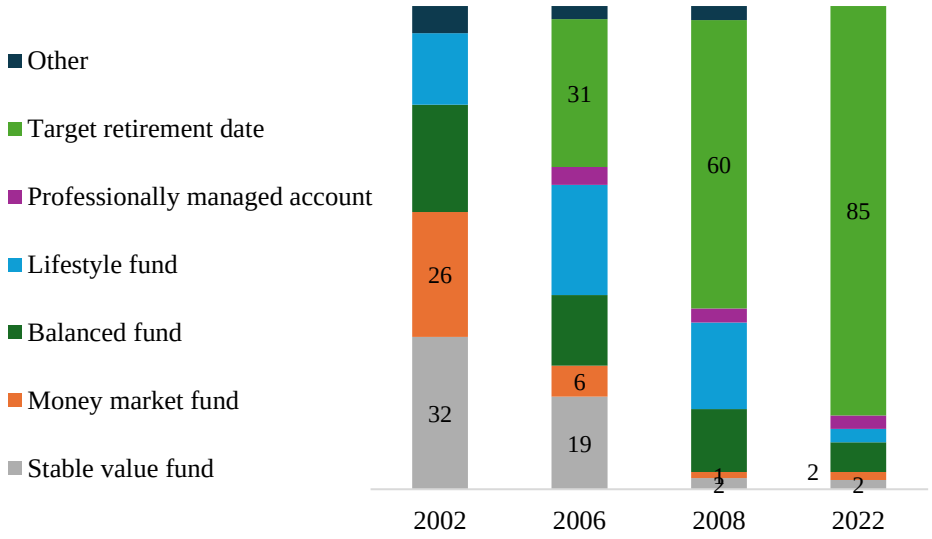
[52] See note 3, supra.

[53] See note 6, supra.

Appendix A: Additional Figures

Defined contribution (DC) plans choice of default investment options has changed over time. The Department's QDIA rules accelerated plan sponsors' selection of target date funds as their default investment (Figure A1).

Figure A1
Default Investment Option Used for Automatic Deferrals
Percentage of plans with automatic enrollment

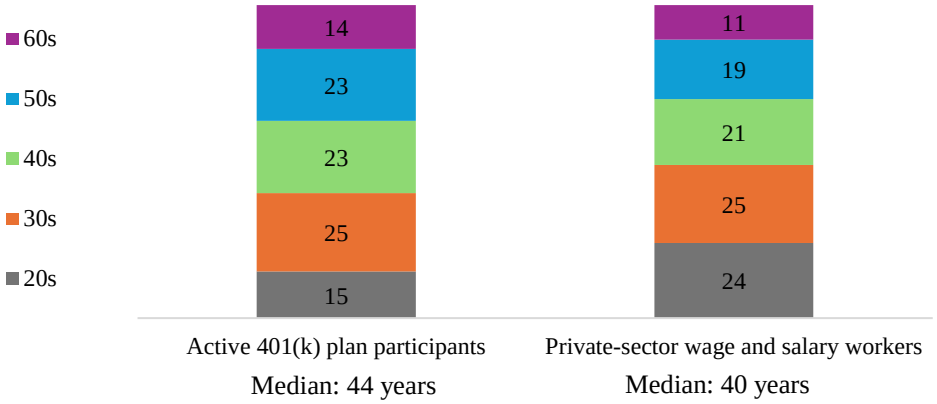


Source: Plan Sponsor Council of America, *Annual Survey of Profit Sharing and 401(k) Plans*

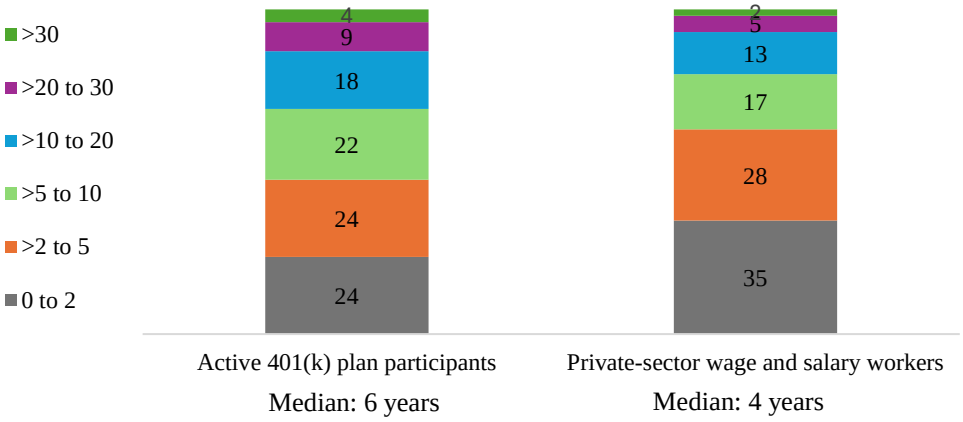
DC plan account owners represent a variety of demographic characteristics. 401(k) plan participants represent a range of ages and tenures (Figure A2). DC-owning households come from a range of incomes (Figure A3) and represent a diverse population (Figure A4).

Figure A2
401(k) Plan Participants Represent a Range of Ages and Job Tenures

Percentage of individuals aged 20 to 69 by age, 2022

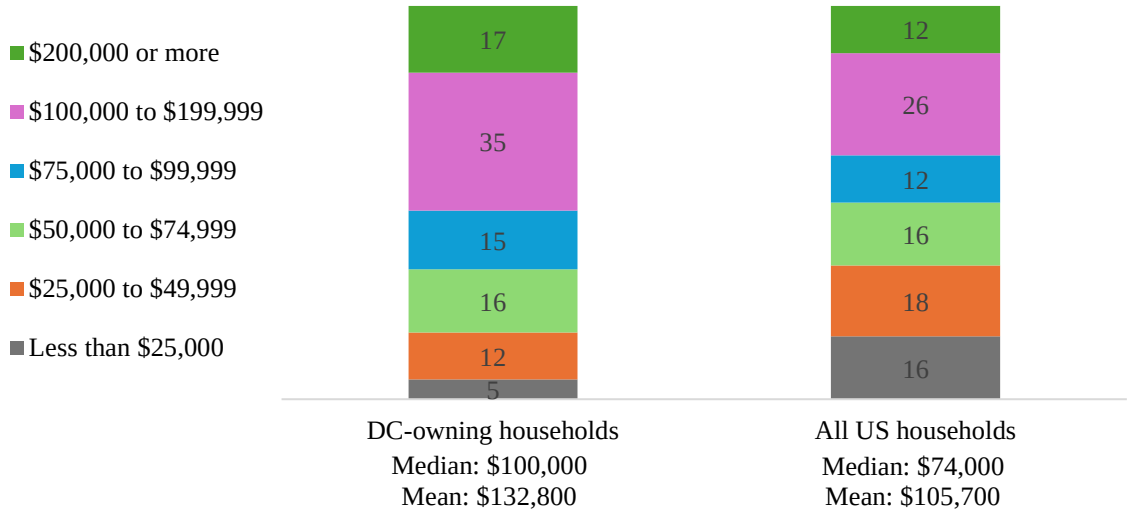


Percentage of individuals aged 20 to 69 by years of job tenure, 2022



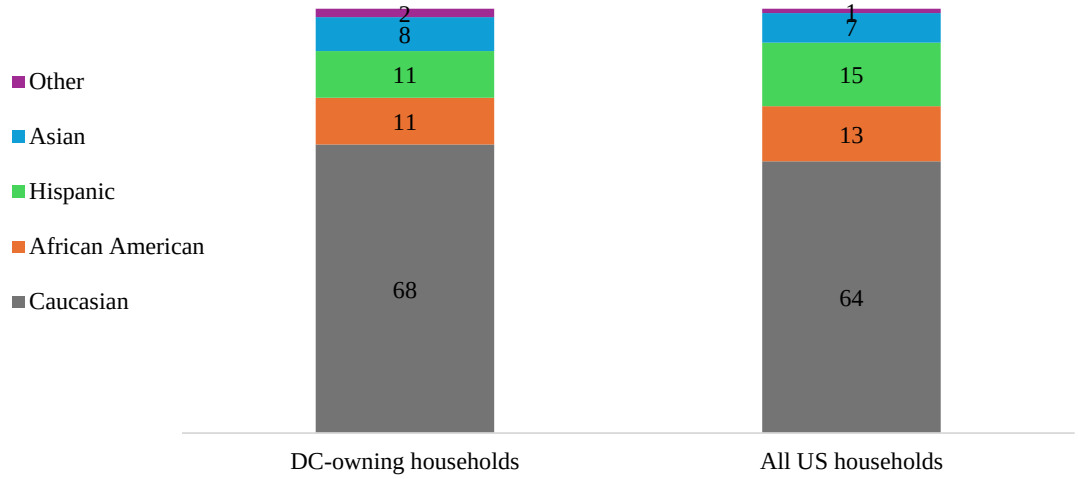
Sources: Investment Company Institute tabulations of Current Population Survey data and tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

Figure A3
Households with DC Plan Accounts Cover All Income Groups
Percentage of US households with DC accounts and all US households by household income, 2023



Note: Total reported is household income before taxes in 2022.
Source: 2023 ICI Annual Mutual Fund Shareholder Tracking Survey

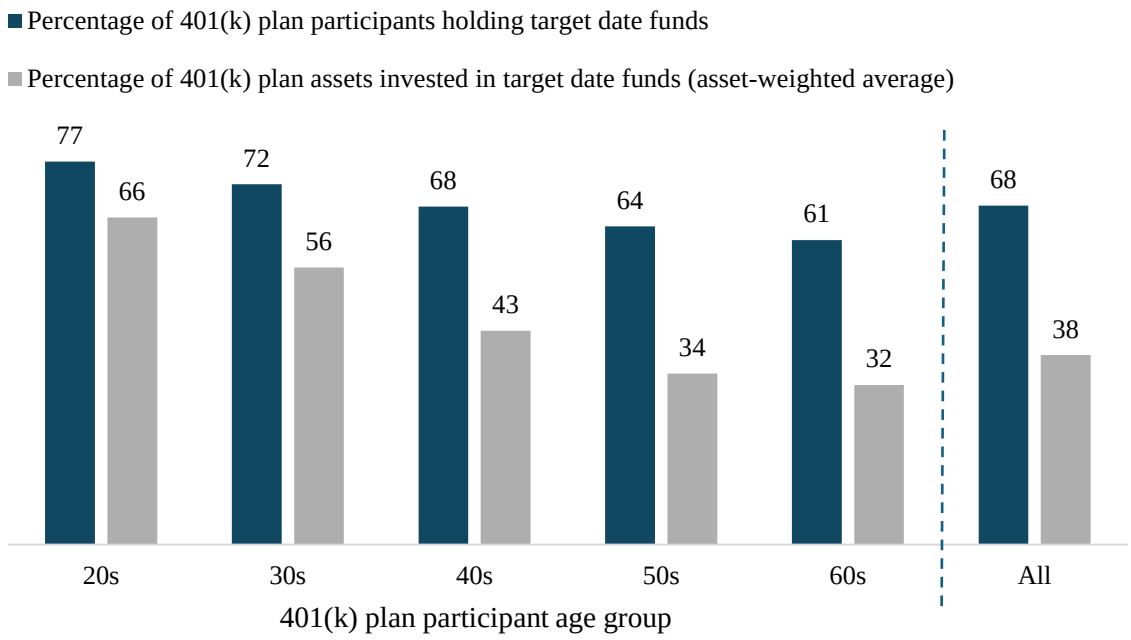
Figure A4
DC-Owning Households Represent All Ethnic Backgrounds
Percentage of US households with DC accounts and all US households by race/ethnicity, 2023



Source: 2023 ICI Annual Mutual Fund Shareholder Tracking Survey

Target date fund use varies across 401(k) plan participants. Younger 401(k) plan participants are more likely to hold target date funds (Figure A5) as are participants who are newer to their jobs.[54]

Figure A5
Target Date Fund Use Is Higher Among Younger 401(k) Plan Participants
Year-end 2022



Note: A target date fund typically rebalances its portfolio to become less focused on growth and more focused on income as it approaches and passes the target date of the fund, which is usually included in the fund's name. Funds include mutual funds, bank collective trusts, and life insurance separate accounts.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

401(k) plan participants often hold equities. Target date funds offer a range of glide paths and changing exposure to equities. Some policymakers have questioned whether their allocation to equities is too high as the fund approaches and passes the target date.[55] The target date fund market offers a range of exposure to equities at the target date so that plan sponsors may select the suites or series of target date funds that they determine are appropriate for their workforce.[56] Additionally, any individual investor seeking a lower allocation to equities may choose a closer

[54] See Figure A9 in Holden, Bass, and Copeland 2024, note 5, supra.

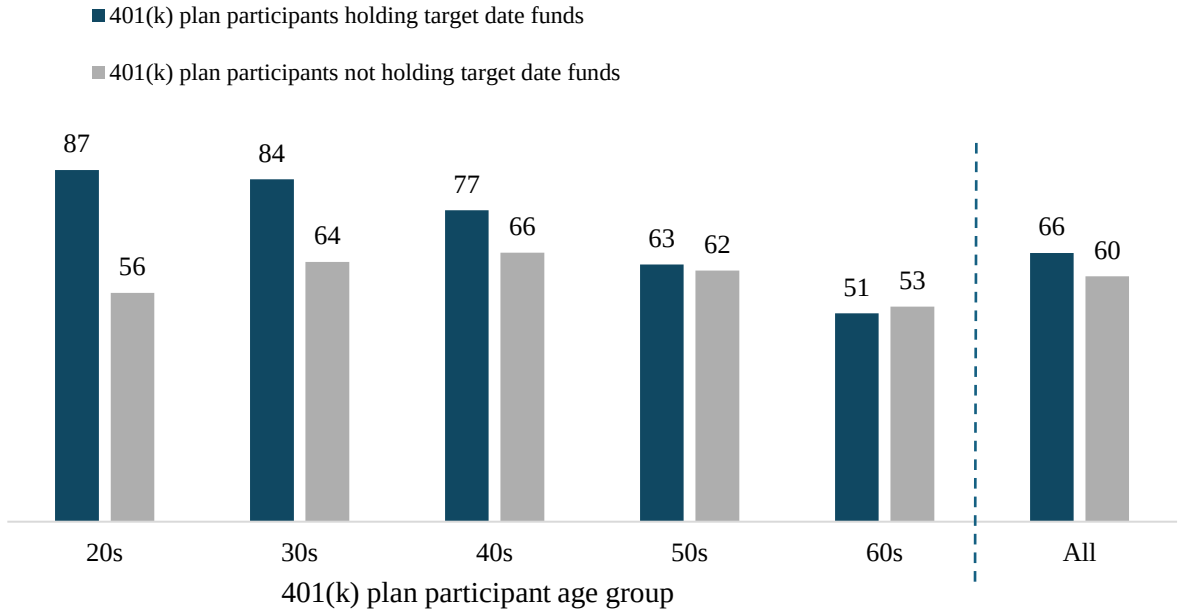
[55] See Murray and Scott, US Senate Committee on Health, Education, Labor, and Pensions, and US House Committee on Education and Labor, Letter to Comptroller General of the United States, US Government Accountability Office (May 6, 2021), available at https://www.help.senate.gov/imo/media/doc/050621%20GAO%20Target%20Date%20Fund%20Request%20FINAL.pdf .

[56] See Investment Company Institute, "Quick Facts on Target Date Funds, note 12, supra.

target date, making them look young for the fund. Alternatively, an investor seeking a higher allocation to equities may choose a later target date, making them look old for the fund.[57]

401(k) participants tend to hold equities regardless of their age or target date fund ownership status. Additionally, equity ownership is most similar among older 401(k) participants across those owning and not owning target date funds. Overall, at year-end 2018, 401(k) plan participants with target date funds had 66 percent of their 401(k) plan assets invested in equities (through equity funds, the equity portion of balanced and target date funds, or company stock), compared with 60 percent, on average, among those without target date funds (Figure A6). Younger 401(k) participants with target date funds had a higher average allocation to equities (87 percent) than those without target date funds (56 percent). In contrast, the oldest 401(k) participants with target date funds had a slightly lower average allocation to equities (51 percent) than those without target date funds (53 percent).

Figure A6
401(k) Plan Participants Tend to Invest in Equities Regardless of Target Date Fund Ownership Status
Equities as a percentage of account balances by 401(k) plan participant age and target date fund ownership status, year-end 2018



Note: Equities include equity funds, company stock, the equity portion of target date funds, and the equity portion of non–target date balanced funds. Percentages are dollar-weighted averages.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

[57] See Holden, VanDerhei, and Bass 2021, note 28, supra.

Figure A7
Changes in Allocation to Target Date Funds Among Consistent 401(k) Participants
Percentage of consistent 401(k) participants by age, year-end 2016 and year-end 2022

	Changes in 100 percent allocation to target date funds					
Age	100 percent in 2016	Moved away from 100 percent by 2022	Remained at 100 percent	Moved to 100 percent by 2022	Net change	100 percent in 2022
20s	61.5	-6.5	55.0	3.2	-3.3	58.2
30s	51.2	-6.1	45.1	5.3	-0.8	50.4
40s	36.1	-4.2	31.9	5.7	1.5	37.6
50s	30.0	-3.6	26.4	4.9	1.3	31.3
60s	30.6	-3.7	26.9	4.2	0.5	31.1
All	35.5	-4.2	31.3	5.0	0.8	36.3

Note: A target date fund typically rebalances its portfolio to become less focused on growth and more focused on income as it approaches and passes the target date of the fund, which is usually included in the fund's name. Funds include mutual funds, bank collective trusts, life insurance separate accounts, and any pooled investment product primarily invested in the security indicated. The consistent sample is 2.1 million 401(k) plan participants with account balances at the end of each year from 2016 through 2022. Age group is based on the participant's age at year-end 2022.
Source: Tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project

DC plan participants typically have choice of distribution options. For example, 67 percent of Vanguard DC plans offer installments other than RMDs, and 40 percent offer ad hoc partial distributions (2023 data).[58] The Plan Sponsor Council of America finds that 55 percent of plans surveyed offer access to installment payments to retirees, and 61 percent offer periodic/partial withdrawals (Figure A8).[59] Ten percent of plans surveyed offered annuities to retirees.

Figure A8
Annuity or Payout Distributions Offered in 401(k) and Profit Sharing Plans
Percentage of plans surveyed by PSCA, 2022 data

	Distribution offered:	
	Pre-retirement	Retirement
Installments	30%	55%
Periodic/partial withdrawals	41%	61%
Annuities	4%	10%

Source: Plan Sponsor Council of America, *66th Annual Survey of Profit Sharing and 401(k) Plans*

[58] See Figure 114 in Clark 2024, note 34, supra.

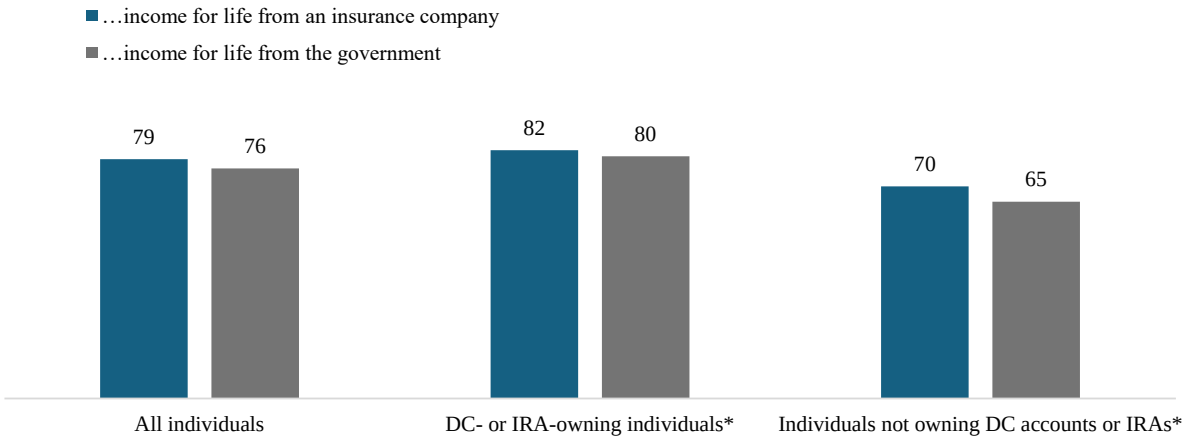
[59] See Tables 155 and 157 in Plan Sponsor Council of America 2023, note 22, supra.

Figure A9
Social Security Benefit Formula Is Highly Progressive
Average scheduled Social Security replacement rates for workers in the 1960s birth cohort by quintile of lifetime household earnings, percent

Quintile of lifetime household earnings	CBO estimated replacement rate
Lowest	78
Second	58
Middle	49
Fourth	41
Highest	31

Note: The replacement rate is the ratio of Social Security benefits net of income tax to average inflation-indexed lifetime earnings. Replacement rates are for workers claiming benefits at age 65. For workers born in the 1960s, the Social Security full benefit retirement age is 67. If these workers claimed benefits at age 67, benefits would increase by about 15 percent.
Source: Congressional Budget Office, *CBO's 2021 Long-Term Projections for Social Security: Additional Information*

Figure A10
Individuals Disagreeing with the Statements: The government should require retirees to trade a portion of their retirement plan accounts for a fair contract that promises to pay them…
Percentage of US individuals disagreeing by ownership status,* fall 2023



*DC- or IRA-owning individuals are individuals aged 18 or older whose households owned 401(k) plan accounts, other DC plan accounts, or IRAs at the time of the survey.
Note: In 2023, the sample includes 1,482 DC- or IRA-owning adults and 553 adults not owning DC accounts or IRAs. The fall 2023 survey was conducted on the NORC AmeriSpeak® panel, which uses a mixed-mode data collection methodology. The fall 2023 survey includes 1,873 surveys completed online and 162 surveys conducted over the phone.
Sources: ICI tabulation of NORC AmeriSpeak® survey data (fall 2023)

Appendix B: Target Date Funds Have Several Investor Safeguards

When a plan participant invests in a target date fund, several protections will apply, whether the target date fund is structured as a mutual fund or a CIT. Retirement plan participants may invest in a target date fund by affirmatively electing to invest in a target date fund, if a retirement plan includes target date funds in its investment menu. Alternatively, an employee's retirement plan account may be invested in a target date fund by default.

ERISA provides protections through its investment selection rules and disclosure requirements. ERISA has strict standards that apply to the selection of any investment option that is offered by a plan, including target date funds. A plan's fiduciary—usually the employer who sponsors the plan or an administrative committee created to oversee the plan—selects and monitors investments for use in the plan's investment lineup. In doing so, the fiduciary must comply with a comprehensive set of ERISA obligations that require it to act with prudence and for the exclusive benefit of the plan and its participants.[60] The duty to act prudently requires expertise. As the Department explains, a fiduciary who lacks expertise "will want to hire someone with that professional knowledge to carry out the investment and other functions."[61] ERISA prohibits self-dealing and restricts conflicts of interest, among other practices. In meeting ERISA's obligations, therefore, any investment option that is added to the plan must have gone through a thorough vetting process by the plan fiduciary. Participants in a 401(k) plan must be given certain information about the investments available under the plan.[62]

When an investment option is designated by the plan as a default under the QDIA rules,[63] additional requirements apply, in addition to the investment selection duties described above. In crafting the QDIA regulation, the Department placed limits on the investments that can be used as a QDIA and included several conditions, designed to protect plan participants. The QDIA regulation requires that the plan provide the participant with a notice that describes the default investment and explains how the participant can provide investment direction.

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[60] The Department's Investment Duties regulation (§ 2550.404a–1) was most recently published at 87 Fed. Reg. 73822 (December 1, 2022).

[61] See page 2 of Meeting Your Fiduciary Responsibilities, published by EBSA available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities-booklet-2021.pdf.

[62] For example, plans must provide annual notices that describe fee and investment information for all of the plan's designated investment alternatives. If the plan is an ERISA section 404(c) plan, it must provide additional information regarding each investment option.

[63] The Pension Protection Act (PPA) of 2006 directed the Department to issue a rule defining what investments could qualify for safe-harbor treatment as default investments. A "qualified default investment alternative" (QDIA) is an investment option in a retirement plan that meets certain requirements prescribed by the DOL for default investments selected by plan fiduciaries.

Target date funds that are mutual funds include additional layers of investor safeguards. Like all mutual funds, target date mutual funds are subject to regulatory and disclosure requirements under the federal securities laws, including the Investment Company Act of 1940, which imposes significant requirements on the organization and operation of mutual funds and imposes fiduciary duties on mutual fund boards of directors and their advisers.[64] Target date mutual funds often operate as funds of funds—funds that invest primarily in other funds—which must meet additional, strict requirements under the 1940 Act.

Disclosure is one key safeguard. Target date mutual funds explain their asset allocation approaches and glide paths in disclosure documents required by the Securities and Exchange Commission (SEC).[65] Fund advertising materials intended for retail investors are reviewed by the Financial Industry Regulatory Authority (FINRA). Fund advertising materials also must comply with SEC and FINRA requirements designed to assure these materials are not misleading. Underwriters and brokers who sell mutual fund shares are subject to the Securities Exchange Act of 1934 and the regulations of FINRA. Advisers to mutual funds are subject to regulation under the Investment Advisers Act of 1940.

Since their inception, rules and regulations affecting target date mutual funds have been adopted that improved their ability to operate and increased their transparency to the benefit of investors. For example, in 1996, Congress amended the Investment Company Act to expand funds' ability to invest in other funds.[66] In 2006, an SEC rule required funds of funds to include both direct and indirect expenses in the expense ratio reported in its prospectus fee table, thereby providing investors more transparency around fees.

Target date funds structured as CITs also are cost-effective, diversified, and regulated. Bank-sponsored CITs may be offered as an alternative to mutual funds in DC plans. Like mutual funds, CITs pool the assets of investors and (either actively or passively) invest those assets according to a particular strategy. Mutual funds are regulated under the Investment Company Act of 1940, which subjects mutual funds to disclosure and reporting requirements as a retail product. In contrast, CITs are regulated under banking laws and are not marketed as a retail product. As discussed in detail below, CITs are subject to bank and ERISA disclosure and reporting requirements.

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[64] For more information on how mutual funds operate and the core principles underlying their regulation, see Appendix A in Investment Company Institute, *2024 Investment Company Fact Book: A Review of Trends and Activities in the Investment Company Industry*, Washington, DC: Investment Company Institute (May 2024), available at https://www.icifactbook.org.

[65] Other target date funds, offered as collective trusts or separate accounts, are also subject to different or additional regulatory regimes, not discussed here.

[66] Most notably, the amendments permitted open-end funds and unit investment trusts (UITs) to acquire an unlimited amount of shares of other open-end funds and UITs that are part of the "same group of investment companies." Since then, the SEC has provided additional investment flexibility to fund of funds arrangements (including target date funds) through its rulemaking and exemptive authority, helping facilitate their growth.

CITs established at federally chartered banks are subject to Office of the Comptroller of the Currency (OCC) regulations, including reporting asset amounts (by banking institution) to the Federal Deposit Insurance Corporation (FDIC) as part of the bank's Call Report.[67] CITs established at non-depository state-chartered banks are subject to state banking regulations. Based on conversations with several ICI members, we understand that state bank regulators tend to follow OCC guidelines.

Because of their common use in DC plans, there has been significant convergence in the operation and investment design of CITs and mutual funds available in DC plans. For example, similar or identical investment strategies are offered in both vehicles, and consequently, these funds will operate in fundamentally similar ways, including with respect to their disclosure, valuation, and redemption policies.

One significant difference between mutual funds and CITs is that, unlike mutual funds, CITs are treated as holding ERISA plan assets. Therefore, the entity managing the CIT is a discretionary investment manager subject to ERISA, which requires it to act with prudence and for the exclusive benefit of the plan and its participants. The bank that established the CIT also is an ERISA fiduciary subject to ERISA's fiduciary duties. This application of ERISA duties (layered over the plan fiduciary's own duty to prudently select and monitor plan investments) provides significant investor protections.

Further, while CITs are not subject to the same disclosure requirements as mutual funds under federal securities law, the same ERISA disclosure requirements apply, whether the investment is a mutual fund or a CIT (i.e., the annual disclosure of fees and performance, and the information required to be disclosed under ERISA section 404(c)).

More retirement plan sponsors have begun offering CITs as options in 401(k) plan lineups, which has translated into CIT asset growth. The share of assets held in CITs by large 401(k) plans increased from 6 percent in 2000 to an estimated 32 percent in 2022.[68] This recent expansion is due, in part, to the growth in target date CITs. DOL Form 5500 filings by plan sponsors and CITs as direct filing entities (DFEs) provide detailed information on the names and assets of CITs held in large plans (typically 100 participants or more).[69]

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[67] Bank call reports are available at https://cdr.ffiec.gov/public/ManageFacsimiles.aspx.

[68] See Figure 3.11 in *2024 Investment Company Fact Book*, note 64, supra.

[69] Form 5500 filings are available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/foia/form-5500-datasets. For summary reports, see "Retirement Bulletins: Direct Filing Entity," available at https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/direct-filing-entity; and "Retirement Bulletins: Private Pension Plan," available at https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins.