



National Association of Independent
Retirement Plan Advisors

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Release Nos. 3309126; 34-62399; IC-29301**
File No. S7-12-10
Investment Company Advertising: Target Date
Retirement Fund Names and Marketing

Ladies and Gentlemen:

NAIRPA is a national organization of firms which provide independent investment advice to retirement plans and participants. NAIRPA's members are registered investment advisors whose fees for investment advisory services do not vary with the investment options selected by the plan or participants. In addition, NAIRPA members commit to disclosing expected fees in advance of an engagement, reporting fees annually thereafter, and agreeing to serve as a plan fiduciary with respect to all plans for which a member serves as a retirement plan advisor.

As service providers to participant-directed workplace retirement plans [*e.g.*, Internal Revenue Code section 401(k) plans (401(k) plans)], our members are especially interested in how target date funds (TDFs) affect the plans they serve. As noted in the Release, about two-thirds of the assets held in TDFs are in defined contributions plans. (*See* Release, fn 22) In light of this important role TDFs play in defined contribution plans and the experience and expertise of our members, the focus of our comments is on the issues related to plans—especially participant-directed 401(k) plans—rather than the specific items on which the Commission requested public comment.¹

Background

In our experience, the most common employer-sponsor retirement vehicle available to American workers is a 401(k) plan in which the plan sponsor (or a committee delegated by the sponsor) selects investments in which participants' accounts may be invested. In these plans, participants are given the opportunity to select among the investment options (often referred to as the "designated investments"). In other words, the participants have the right to direct the allocation of their deferrals (and, generally, employer contributions as well) in their accounts (hence, the term "participant-directed" plans). If a participant fails to exercise this right, the employer (or the committee) must invest his or her account. These are referred to as "defaulting participants." As noted in the Release, in light of the advent of the Qualified Default Investment Alternative (QDIA), as authorized pursuant to Department of Labor regulations, TDFs are especially prevalent and popular in participant-directed plans.

¹ Other types of workplace participant-directed savings vehicles include Internal Revenue Code section 403(b) and 457 arrangements. Although these plans in most cases are not subject to ERISA, TDFs are nonetheless commonly utilized in these arrangements and these comments are thus applicable to them as well.

Thus, for roughly two-thirds of the TDFs market, there are three “investors” to whom disclosures are important:

1. The plan fiduciaries (or sponsors of participant-directed arrangements not subject to ERISA) who are responsible for selecting the family of TDFs as designated investments of the plan. These “investors” are not making the ultimate decision to buy a specific fund (except in the case of defaulting participants as noted below) but are deciding on the funds that are available for selection by other investors (*i.e.*, the participants).
2. Participants who elect to control their own accounts (who we refer to as “active participants”).
3. Defaulting participants, to whom the disclosures regarding the fund into which their accounts are invested are particularly relevant.

Because of the different roles of each of these groups, the disclosures for each of the three groups will naturally need to be different.

Specific Comments

With respect to disclosure to all of the above groups, we submit that more focused disclosure is necessary to give all investors a better understanding of the TDFs they are evaluating. While we applaud the SEC’s proposal for summary disclosure of the asset allocation at or near the name of the fund, we submit that there is other information that is equally important. With this background in mind, we have the following specific comments regarding disclosures with respect to TDFs.

1. Disclosures for the Plan Sponsor/Plan Fiduciary. The plan sponsor/fiduciary selects TDFs for the ultimate participant investor. We submit that the following disclosures in a summary fashion would be particularly important for the plan sponsor/fiduciary:
 - The glidepath range — that is, the asset allocation at five-year increments.
 - The aggressiveness of underlying asset classes selected for the fund, regardless of the asset allocation. For example, a fund may choose high yield (or junk) bonds for the fixed income portion of the portfolio. Such a fund would most likely present a greater volatility risk to the investor than another fund with the same asset allocation in high grade bonds.
 - The point in which the glidepath becomes the most conservative and what that means in terms of asset allocation.
 - The assumed participant retirement age that is being utilized by the TDF, since it affects the horizon till death.
 - Whether the TDF utilizes a “to” versus “through” approach, and if the latter, the mortality assumption being used in the “through” glidepath. We presume that, in

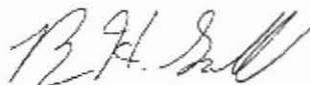
most cases, the plan sponsor who is responsible for selecting the TDF for a defaulted participant will act in the most conservative manner possible. Typically, that will mean that the plan sponsor will select TDFs based on the assumption that participants will retire at age 65, the normal retirement age for the vast majority of retirement plans. In that situation, it is especially important for the plan sponsor to understand all of the implications of a “to” versus “through” glidepath.

2. Disclosures for Participants. Additional disclosures are appropriate for participants since they are not in a position to select among the families of TDFs but may only choose the particular fund within the investment product chosen by the employer. We suggest that the disclosures for participants include the following:
 - All the above regarding the funds within the fund family so that the participant may select the fund that has a target date appropriate for his or her own needs. In some instances the target date chosen may be many years different from the actual intended retirement age of the participant, depending on the glidepath and the aggressiveness of the investments of the particular fund.
 - The impact on 401(k) participants who take a lump sum cash distribution at retirement. In our experience, most participants pick their distribution in a cash lump sum at retirement. Even if they roll the distribution over to an IRA, they **may** not reinvest (or even be able to reinvest) in the same TDF. Thus, any fund in which the landing point is 20 years after retirement may be wholly inappropriate for that participant. Our point is not to engage in a debate of the “to” versus “through” glidepaths but to emphasize that disclosure of asset allocation at the target date and/or the landing point, while helpful, may not be sufficient.
 - A statement as to the potential impact of disparate ages between spouses. A TDF for a participant who intends to retire at age 70 (with a life expectancy of 16 years) and his spouse is age 68 (with a life expectancy of 22 years) may not be appropriate for a 70-year-old with a 55-year-old spouse (whose life expectancy may be 35 years).
3. Disclosures for Defaulted Participants. The defaulted participant presents a unique challenge, since they are initially uninvolved in the decision process to invest in the TDF. Therefore, there must be particularly suitable disclosure for a participant who is uninvolved in the process for one reason or another. This kind of disclosure would be important because a defaulted participant may at some point elect to take control of the account and it would be appropriate for that participant to understand the investment in which his or her account has been maintained. In this regard, we would suggest that for the defaulted participant, inclusion in a summary fashion of all of the information noted in item 2 is especially important to be delivered on an annual basis so that at some point the participant may take control of his or her own account and decide if the TDF in which the account is invested is appropriate for that participant.
4. Non-Securities Investments. Increasingly, investments that are not registered investment companies are structured as TDFs. Examples include collective trust funds and separate accounts. Further, funds offered inside a group annuity contract, where the insurance carrier is the investor which receives a prospectus, will not benefit from the new disclosure rule. We are not proposing that all of these investments be made subject to the

Investment Company Act or other SEC jurisdiction. Rather, we are suggesting that there be a coordinated effort among various regulatory agencies — especially the Employee Benefit Security Administration of the U.S. Department of Labor — to ensure that a common set of disclosures is developed.

We appreciate the opportunity to provide these comments to the SEC. If you would like to discuss any of these comments, please contact Craig Hoffman at (703) 516-9300. These comments were prepared by the Target Date Fund Task Force, consisting of Bruce Ashton, Anne Comer, Fred Reish, Pamela Anderson, Chris Karam and Richard Landsburg

Very truly yours,

A handwritten signature in black ink, appearing to read "B.H. Graff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian H. Graff, Esq., APM
ASPPA Executive Director/CEO