

CERTIFIED FINANCIAL PLANNER

BOARD OF STANDARDS, INC.

STATEMENT OF
CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.[®]
BEFORE THE
UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING

June 16, 2010

Mr. Chairman, Ranking Member Corker, and Members of the Special Committee, thank you for the opportunity to submit this statement as part of the record for the Senate Special Committee on Aging hearing regarding retirement issues. Certified Financial Planner Board of Standards, Inc. (CFP Board) is uniquely positioned to provide input to the Special Committee as it considers ways to improve the ability of elderly Americans to enjoy a comfortable retirement. CFP® professionals perform an important role in counseling individuals about retirement.

I. Background on CFP Board

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics requirements for financial planner professionals who hold the CFP® certification. Our mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently regulates over 61,000 CFP® professionals who agree on a voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

Financial planning professionals provide services that integrate knowledge and practices across the financial services industry. Financial planners work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources. Financial planning typically covers investment, income tax, education, insurance, retirement, and estate planning.

II. Unique Role of CFP® Professionals in Retirement Planning

CFP® professionals provide financial planning services to Americans at all phases of their working life—from newly minted college graduates trying to figure out how much to contribute to an IRA or their new employers' 401(k) plans, to individuals at or near retirement age who seek professional assistance regarding how best to utilize their retirement savings once they leave the workforce. Additionally, CFP® professionals provide essential retirement planning services to Americans across all racial, social, geographic, and economic lines. As professionals who spend their days helping individuals and families meet both their short-term and long-term financial goals, CFP® professionals have a unique understanding of the specific challenges faced by individuals in trying to achieve adequate retirement security.

CFP® professionals take a holistic approach to retirement planning. CFP® professionals talk to individuals considering retirement about various issues affecting their decision-making process, such as the risk that a retiree will outlive her savings; whether she has adequate savings to retire or needs to keep working and saving; ways to maintain a reasonable standard of living; and the need to plan for and anticipate unexpected expenses. While longevity risk is an important piece of the retirement security puzzle, it is only one piece, and we cannot lose sight of the bigger picture. Put simply, it would be an enormous mistake to focus on de-accumulation of assets at the expense of issues that are arguably more important—in particular, the need to increase retirement savings.

III. CFP Board Supports Efforts to Help Americans Live Within Their Means and Save More for Retirement

There are a number of significant challenges that limit Americans' ability to achieve adequate retirement security. CFP Board recently conducted a survey of CFP[®] professionals in which it asked about five factors that can challenge an individual's ability to achieve adequate retirement security. Notably, the most significant challenges identified were inadequate retirement savings, living beyond one's means, and longevity risk.

<u>Factor</u>	<u>% of Survey Respondents Indicating that the Factor is a "Significant Challenge"</u>
Inadequate retirement savings	88%
Living beyond one's means	64%
Longevity risk	63%
Individuals retiring too early	38%
Unforeseeable expenses	36%

The fact that inadequate retirement savings and living beyond one's means were classified as significant challenges by the greatest percentage of survey respondents should not be surprising. A 2007 Government Accountability Office (GAO) report found that the total median account balance in 2004 for workers age 60 to 64 was only \$60,600.¹ More recent data from the Employee Benefits Research Institute (EBRI) indicate that the average American worker continues to have far too little retirement savings. In fact, 54% of workers surveyed as part of EBRI's 2010 Retirement Confidence Survey (RCS) reported "that the total value of their household's savings and investments, excluding the value of their primary home and any defined benefit plans, is *less than \$25,000*."² Further, 27% of workers (up from 20% in 2009) reported having virtually no savings and investments, with "less than \$1,000 in savings."³

Thankfully, history has demonstrated that rules can be established at the federal level to help change individual savings behavior in positive ways. Perhaps the best and most recent example of this is with respect to the use of automatic enrollment and automatic increase (collectively, auto-enroll) in connection with employer-sponsored 401(k) plans.

Although auto-enroll was used by some employers prior to 2006, it was not until the enactment of the Pension Protection Act of 2006, which provided for an express safe harbor for qualifying auto-enroll arrangements, that we saw employers adopt such arrangements in meaningful numbers. In fact, data from GAO indicate that as of 2004, just 1% of American

¹ U.S. GOV'T ACCOUNTABILITY OFFICE, PRIVATE PENSIONS: LOW DEFINED CONTRIBUTION PLAN SAVINGS MAY POSE CHALLENGES TO RETIREMENT SECURITY, ESPECIALLY FOR MANY LOW-INCOME WORKERS 16 (Nov. 2007) [hereinafter 2007 GAO REPORT].

² Ruth Helman et al., *The 2010 Retirement Confidence Survey: Confidence Stabilizing, but Preparations Continue to Erode*, EBRI ISSUE BRIEF, No. 340, March 2010, at 15, available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_03-2010_No340_RCS.pdf (emphasis added).

³ *Id.*

employers used auto-enroll in connection with their 401(k) plans.⁴ By 2009, the percentage of American employers using auto-enroll increased to 19%, with even higher rates of adoption among large plan sponsors.⁵ Moreover, all available data indicate that auto-enroll has been very successful in helping Americans save more for retirement. Recent analysis by EBRI found that automatic enrollment is very likely to result in significantly increased 401(k) plan accumulations, especially for low-income workers.⁶

Partly in response to the success of auto-enroll, several related ideas have recently been put forth by stakeholders to assist the average American in saving more for retirement. These ideas include, among others, the establishment of auto-IRAs and mandatory auto-enroll in connection with 401(k) plans. Some have also suggested increasing the scope and amount of the Saver's Credit. CFP Board is generally supportive of establishing new rules that help Americans save more for their retirement. CFP Board encourages Congress to continue to use its legislative authority to establish rules that help increase Americans' savings rates because such rules are likely to have the greatest positive effect on Americans' ability to achieve adequate retirement security.

IV. Further Study Is Needed Regarding the Use of Annuities in Retirement Plans

There is no consensus in the financial planning community over the use of annuities in retirement planning. Many CFP[®] professionals view annuities as important elements in the retirement planning toolbox, and use a wide range of annuity products in retirement planning. However, other CFP[®] professionals never or rarely recommend annuities because of a number of structural barriers that make annuities less attractive than other options for managing longevity risk, such as a program of systematic withdrawals from retirement savings. Given this lack of consensus, CFP Board believes significant study of the issue is necessary before any legislative or administrative changes are made to facilitate the inclusion of lifetime income options in retirement plans. Specifically, CFP Board opposes proposals to require mandatory or default annuitization, and is skeptical of proposals to require annuities as plan options. To the extent changes are made, care must be taken to preserve important participant protections, including fiduciary oversight in employer-maintained plans.

There is, however, some common ground. CFP[®] professionals generally agree that there is a pressing need for greater sensitivity to longevity risk and the importance of careful retirement planning. CFP Board strongly supports efforts to educate all Americans about the need to plan for retirement, and believes that greater transparency and disclosure in annuity pricing and fees would be helpful.

⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, RETIREMENT SAVINGS: AUTOMATIC ENROLLMENT SHOWS PROMISE FOR SOME WORKERS, BUT PROPOSALS TO BROADEN RETIREMENT SAVINGS FOR OTHER WORKERS COULD FACE CHALLENGES 14 (OCT. 2009).

⁵ *Id.*

⁶ Jack VanDerhei, *The Impact of Automatic Enrollment in 401(k) Plans on Future Retirement Accumulations: A Simulation Study Based on Plan Design Modifications of Large Plan Sponsors*, EBRI ISSUE BRIEF, No. 341, Apr. 2010, at 5, available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_04-2010_No341_Auto-Enrl.pdf.

A. CFP Board Does Not Support Mandatory or Default Annuitization

Annuities are unlikely to be a suitable option for all individuals in terms of managing longevity risk. Through careful planning, individuals can often manage longevity risk without the use of commercial annuities. For example, individuals can manage their longevity risk through holistic retirement planning, including systematic withdrawals and an appropriate life style. In many instances, approaches to managing longevity risk that do not involve commercial annuities may be preferable because they may involve relatively lower fees and/or provide increased flexibility for individuals over the course of retirement. Over 60% of CFP[®] professionals recently surveyed agree that retirees have better alternatives to commercial annuities for purposes of managing their longevity risk.

For these reasons, and the reasons discussed throughout this letter, CFP Board does not support proposals that would require mandatory or default annuitization of defined contribution plan or IRA account balances, whether with respect to a participant's full account balance or some portion thereof. In fact, the vast majority of CFP[®] professionals surveyed oppose defaulting participants or IRA owners into annuities—over 90% do not believe retirement plan participants or IRA owners should be defaulted into annuities if they do not opt out of annuitization.

Another approach suggested by some would be to couple mandatory or default annuitization with a time-limited window (e.g., two years), during which an individual could opt out of an annuity. Although CFP Board does not support the use of mandatory or default annuitization, at a minimum, any allowance for default annuitization must provide individuals with the flexibility to opt out of an annuity. CFP Board is concerned that even a narrow, time-limited trial period is unlikely to provide much benefit to participants on the whole because unexpected life events can happen at any time following one's retirement. It may be many years before participants fully comprehend the downsides that can accompany the use of annuities—most notably, the inability to access retirement savings as needed to meet unexpected living expenses, such as unplanned medical, housing, or automotive expenses.

Others have suggested that plans should be required to include at least one annuity as a distribution option or as both an investment and distribution option. Although CFP Board generally supports initiatives that provide for enhanced participant choice, CFP Board believes that it is premature to mandate annuities as plan options, absent further study regarding how a plan sponsor can satisfy its fiduciary obligations in selecting an annuity option, particularly the fiduciary duty to ensure that the insurer will be able to make all payments due under the contract. Moreover, CFP Board believes that any such approach must preserve essential ERISA protections, while ensuring that smaller-size employers, who may have more limited resources, can comply with those rules. Otherwise, requiring plans to include at least one annuity as an investment or distribution option could have a chilling effect on the uptake and maintenance of defined contribution plan arrangements.

B. Annuities Can Be a Useful Tool to Minimize Longevity Risk

Annuities can be a very useful tool in helping some individuals to minimize the risk that they outlive their retirement savings. Annuities accomplish this in large part by providing a guaranteed stream of payments for some specified duration, typically life, and may or may not include similar payments for a surviving beneficiary, such as a surviving spouse or child. In a random survey of CFP[®] professionals, CFP Board found that approximately 71% of respondents at least occasionally recommend commercial annuities when helping people plan for retirement.

CFP[®] professionals use annuities in a variety of ways. Some recommend the use of immediate fixed life annuities to cover a portion of expected fixed expenses while leaving other savings available for unexpected expenses and supplemental income. Others use variable annuity contracts with living benefits, such as guaranteed lifetime withdrawal benefits, to provide a hedge against both longevity risk and investment risk. Still others recommend longevity insurance, which pays a lifetime income stream only if a participant lives beyond a typical life expectancy, for example, by commencing payments only upon attainment of age 85.

Even for CFP[®] professionals who often recommend the use of annuity products, annuities are unlikely to be a realistic option for many individuals given that, on average, Americans have very limited retirement savings. As noted in the 2007 GAO report, the total median account balance in 2004 for workers with a current or former defined contribution plan (including rolled-over retirement funds) was only \$22,800.⁷ For workers age 55 to 64, the median account balance was \$50,000,⁸ and for workers age 60 to 64, the median account balance was \$60,600.⁹

One rule of thumb in the current interest rate environment is that a 65-year-old individual can expect to receive as annualized annuity payments about 4 to 7% of the total amount annuitized. For example, a 65-year-old individual who converts the median defined contribution account balance of \$60,600 to an annuity generally can only expect to receive monthly income of between \$200 and \$350. As this example demonstrates, unless an individual has substantial savings, annuitizing all or even some part of her account balance likely would deprive her of income necessary to meet essential daily living expenses. Thus, our sense is that annuities are more frequently used by participants with better-than-average savings, rather than individuals with low account balances that need assistance the most.

C. There Are a Number of Structural Barriers to the Use of Annuities

As we discuss below, annuities also have several structural barriers to their use—barriers that, in many instances, do not appear to lend themselves to easy solutions.

Inherent insolvency risk. One barrier to the increased use of annuities is that commercial annuities generally are subject to insolvency risk: the risk that the insurer will become insolvent and be unable to deliver the promised annuity payments. As recent history has demonstrated, insolvency risk should not be underestimated by the retirement plan participant or

⁷ 2007 GAO REPORT, *supra* note 1, at 15.

⁸ *Id.*

⁹ *Id.* at 16.

financial planner, as even the largest and most well-capitalized insurers are not always safe from financial distress. Approximately 43% of CFP® professionals surveyed believe that insolvency risk is a significant or major contributing factor as to why individuals may forego annuities.

Unfortunately, there does not appear to be an easy solution to the issue of insurer insolvency risk. One approach CFP® professionals use to mitigate this risk is to counsel clients to spread their annuity purchase across several different providers. This has the effect of diversifying the insolvency risk across several providers and allowing the participant to maximize the applicable state insurance guarantees in the event of insolvency. Although this approach may be appropriate for individuals making significant investments in annuities, it is oftentimes unsuitable for individuals seeking relatively smaller investments in annuities. This approach is likely to have limited application given the relatively low level of retirement savings of the average American worker. In fact, this may present a riskier option where the person does not have the funds to diversify annuities. Short of establishing federal guarantees with respect to promised annuity payments similar to those provided by the Pension Benefit Guaranty Corporation (PBGC) with respect to accrued pension benefits—which likely would be very complicated and involve a significant outlay of public funds—there may be no good solutions to the risk of provider insolvency.

Market volatility and interest rate risk. Another structural barrier to annuitization is that commercial annuities generally are subject to market volatility and interest rate risk. Market volatility refers to the fact that a participant's ability to purchase more or less annuity can vary depending on the extent to which her retirement plan contributions have appreciated or depreciated as of the time she chooses to retire and invest in an annuity. Interest rate risk, which is closely related to market volatility, refers to the fact that a participant's guaranteed annuity payment may be more or less depending on prevailing interest rates at the time of a participant's retirement. These risks can significantly affect the amount of guaranteed annuity payments a given individual receives post-retirement, regardless of how diligent and responsible one may be in saving for retirement. Evidence of this is demonstrated most easily by reference to the market downturn that accompanied the recent financial crisis.

Products are being developed that are meant to address market volatility and interest rate risk. One such product is a deferred fixed annuity contract that allows participants to purchase a lifetime income stream commencing at normal retirement age. Such an arrangement allows participants to lock-in current interest rates and mortality tables and purchase annuity income on a payroll deduction basis, thereby mitigating interest rate and mortality risk in much the same way that the practice of dollar cost averaging tends to average the unit cost of an investment over time. Another product, the variable annuity with living benefits, may also prove helpful in addressing market volatility and interest rate risk, as well as longevity risk. A variable annuity with living benefits essentially promises an annuitant a minimum monthly payment in the event of adverse changes to the annuitant's investment or the interest rate market by promising the greater of (i) a monthly benefit determined based on the actual investment performance of the annuitant's account, or (ii) a specified percentage (e.g., 5%) of a notional account balance.

Although these types of products are fairly new, it is CFP Board's understanding that some plan sponsors may be hesitant to include them in their defined contribution plans because

of uncertainty regarding how ERISA’s existing fiduciary duties apply to the consideration and selection of these products. Moreover, it is CFP Board’s understanding that some plan sponsors may be hesitant to include annuities in their plans as investment options because of concerns regarding how the spousal consent rules apply to a participant’s decision to invest in a deferred life annuity for purposes of asset accumulation only. Accordingly, CFP Board believes it is necessary to consider whether existing rules regarding fiduciary oversight might be made clearer and more comprehensive to address the uncertainty surrounding the use of annuities in defined contribution plans. Additionally, CFP Board believes it is necessary to reexamine the extent to which existing spousal consent rules should apply to amounts invested in a deferred life annuity when used for investment purposes only.

CFP® professionals have developed several techniques to help minimize the risks associated with market volatility and interest rate fluctuations. One approach, known as “laddering,” has an individual purchase annuities over an extended period of time, such as by payroll deduction over her working life. This has the effect of mitigating the risk of purchasing one annuity at a time when interest rates or mortality tables are particularly unfavorable, or at a time when market performance has reduced a participant’s account balance, and thus reduced the amount of annuity that the participant can purchase. Although approaches such as laddering can help reduce the inherent risks associated with market volatility and interest rate fluctuations, they may have little utility where the individual has limited resources or funds. Additionally, they may have little appeal for employers, plan sponsors, and participants because of the cost of implementing them.

Generally irrevocable in nature. Once an individual elects to annuitize her defined contribution plan account balance or IRA, she cannot change her mind. On the one hand, this can be quite positive in that it provides for an unchanging and guaranteed stream of payments that can be relied upon by the annuitant for the duration of her life. On the other hand, this can be a significant drawback if an annuitant incurs unexpected or catastrophic expenses, such as unexpected medical, housing, or automotive expenses. Notwithstanding annuities’ potential benefits in managing longevity risk, many individuals choose not to elect an annuity in the first instance because they are unable or otherwise unwilling to be locked into a distribution form that does not take into account life’s unintended events—events that while unexpected for any given individual are almost certain to happen to all persons at some time over the course of retirement. Of CFP® professionals surveyed, approximately 92% identified the irrevocable nature of an individual’s decision to annuitize as a significant or major contributing factor as to why many individuals forego annuitization. Moreover, of all of the factors that CFP Board polled on, irrevocability was identified by the most respondents (approximately 52%) as a major contributing factor as to why many folks avoid annuities.

No, or costly, death benefits. Another structural barrier to the use of annuities is that many annuities do not provide for contingent benefits in the event of an annuitant’s death (i.e., death benefits). The absence of death benefits can be a significant stumbling block for many individuals in choosing to annuitize their defined contribution plan benefits. This is especially so where 401(k) plan benefits are at issue because such individuals often are uncomfortable with the notion that if they annuitize some or all of their plan benefits and die before reaching average life expectancy, the annuity provider generally is not required to provide any death benefits.

To address this issue, many annuity providers now allow annuitants to purchase death benefits at an additional cost to the annuitant. This additional cost often takes the form of a reduced monthly annuity payment. Unfortunately, given the relatively low retirement savings of the average American worker and the relatively low monthly annuity payment that necessarily follows, most individuals cannot afford to receive the lesser monthly payments that would accompany the purchase of death benefits.

Consumer confusion. Finally, for many Americans, annuities can be very confusing and hard to understand. Approximately 84% of CFP® professionals surveyed agree that a lack of knowledge of annuities and how they work by plan participants and IRA owners is a significant or major contributing factor to the current low rates of annuitization. In fact, over half of the respondents identified such lack of knowledge of annuities as a major contributor to low usage rates.

One reason annuities are so confusing to so many Americans is that there are a myriad of commercial annuities available in the marketplace, along with other products that provide a guaranteed stream of income for some specified period of time. For many individuals, these products can seem overly complicated and hard to differentiate. As a result, many individuals confronted with the decision to annuitize their benefit may decide to forego an annuity in favor of more easily understood and familiar distribution options, such as rolling over defined contribution plan assets to an IRA from which they can then take periodic distributions to meet living and other unanticipated expenses.

One way of addressing consumer confusion, which CFP Board strongly supports, is to facilitate increased consumer education regarding annuities and how they work. Additionally, education at the participant level could go a long way in helping individuals better appreciate both the advantages and disadvantages associated with using annuities to manage longevity risk.

D. CFP Board Supports Increased Participant-Level Education and Fee Disclosure Regarding Annuities and Lifetime Income Options

CFP Board strongly supports increased participant-level education regarding longevity risk and retirement planning generally. A 2010 study by EBRI makes clear that many individuals have little comprehension of longevity risk and how much money they need to save for retirement. Specifically, as part of its 2010 RCS, EBRI found that “[m]any workers continue to be unaware of how much they need to save for retirement.”¹⁰ In fact, “[l]ess than half of workers (46 percent) report they and/or their spouse have tried to calculate how much money they will need to have saved by the time they retire so that they can live comfortably in retirement.”¹¹ Of those workers who performed a retirement needs calculation, 44% “determined the amount they needed to save *by guessing*.”¹² Perhaps most significantly, data from the 2010 RCS indicate that “the retirement savings calculation appears to be a particularly

¹⁰ Helman et al., *supra* note 2, at 22.

¹¹ *Id.*

¹² *Id.* (emphasis added).

effective tool for changing retirement planning behavior.”¹³ More specifically, EBRI found that 44% of workers who calculated a retirement goal amount in connection with the 2008 RCS report having made changes to their retirement planning as a result, with 59% reporting that they have started saving more for retirement.¹⁴

These findings clearly demonstrate that many American workers currently lack sufficient knowledge regarding longevity risk and the costs associated with retirement generally. They also indicate that individual savings rates can be positively affected merely through increasing an individual’s awareness of his own retirement needs. Accordingly, CFP Board believes steps should be taken to facilitate increased participant-level education regarding longevity risk and de-accumulation generally.

CFP Board recognizes that individuals will continue to invest in commercial annuities as a way to manage longevity risk. Thus, CFP Board is hopeful that any initiative to increase participant-level education would include increased participant understanding of annuities, not only as an option for managing longevity risk but also with respect to how annuities operate generally. Over 84% of CFP® professionals surveyed agree that participants in retirement plans or IRAs need greater access to and knowledge of fees and other essential features of annuities.

CFP Board also believes increased transparency regarding the fees associated with commercial annuities and other lifetime income options is necessary. As discussed above, many individuals are confounded by the annuity options available in the marketplace, including the amount and nature of fees associated with the purchase of annuities. For example, just because an annuity may cost less from one annuity provider than from another provider does not necessarily mean that a participant is better off with the lower-cost annuity. The reduced cost could be the result of numerous factors, such as the absence of contingent benefits or the fact that the provider is subject to increased insolvency risk. Only through increased disclosure of fees and related participant-level education can participants be confident that they are in fact making the correct choice in choosing a commercial annuity or other lifetime income option when planning for the spend-down phase of retirement.

V. Target Date Funds Should Be Subject to Greater Scrutiny and Oversight¹⁵

Much of the debate regarding target date funds involves whether a target date fund’s glide path should be designed to change “to” or “through” the target date, with many arguing that a fund’s glide path should continue to change through the target date. CFP Board believes, given the reasonable expectations created by the name and marketing of the fund, that a target date fund’s glide path should be designed to change “to” the target date. First, investors understand the target date in a fund’s name to mean the date at which they expect to access the savings in the fund. The focus on a “to” or “through” determination should focus on investor expectations and not on the desires of fund managers. Second, target date funds are marketed as “cruise control” retirement savings tools that will meet the investor’s retirement goals at the target date.

¹³ *Id.* at 25.

¹⁴ *Id.*

¹⁵ CFP Board previously submitted a statement as part of the record for the Special Committee on Aging hearing on October 28, 2009, titled “Default Nation: Are 401(k) Target Date Funds Missing the Mark?”

However, these marketing materials do not clearly explain that investment decisions by the fund managers often take into account factors beyond the retirement date, including other investments, time horizon, and risk aversion, and thus continue an aggressive investment strategy past the target date. Finally, the name of the fund is the most important consideration to investors as even if they read and comprehend disclosure materials, no amount of disclosure can override the misleading nature of a target date fund's name.

The use of a target date in a fund's name carries with it a generally understood message to investors. For example, the name "Target Date 2010" says to the investor: "This fund will invest in an appropriate mix of investments for someone retiring around the year 2010."¹⁶ The use of the year 2010 in the name of the fund implies that, by 2010, the fund will contain an asset allocation of equity and fixed-income investments that will be subject to relatively low market volatility and will provide the investor with ready access to cash assets. In contrast, a Target Date 2050 Fund would be expected to contain an allocation of equity and fixed-income investments that would subject the fund to substantially more risk, which is necessary to allow for growth in the fund over time that will, at a minimum, outpace inflation.

The asset allocations in target date funds should reflect the anticipated timeframe in which the investor will need to access those funds. Yet target dates are being used to label funds that have combinations of investments that are well outside expected, generally accepted asset allocations for the targeted investor. In fact, as Securities and Exchange Commission (SEC) Chairman Mary Schapiro has recognized, target date funds are subject to widely varying strategies among fund managers, with 2010 target date funds ranging in performance from minus 3.6% to minus 41% in 2008.¹⁷ A loss of up to 41% of assets from a fund labeled 2010 is completely inconsistent with an investor's reasonable expectation that his or her assets would not be subject to such high market volatility. We recognize that less than one year later, these losses have been partially recovered as the market has rebounded from historic losses. However, this type of volatility—losses of up to 41% one year followed by gains of up to 30% the following year—is exactly what target date funds are supposed to avoid as the target date approaches.

Target date funds are marketed as "auto pilot" or "cruise control" investments pegged to an investor's expected retirement date. By their very name, they create a reasonable expectation that such a fund will have sufficiently reduced volatility and its assets will be available for the investor's use as of the target date. Target date funds are not the appropriate vehicles for implementing aggressive retirement investment strategies for those nearing retirement. Inappropriate asset allocations in target date funds affect not only 401(k) plans, but also 529 plans. As with target date funds, the asset allocations in 529 plans should reflect the anticipated timeframe in which the investor will need to access those funds. To go one step further, as Chairman Schapiro recognized, "A target date fund underlying a college investment or so-called 529 plan . . . would need to more closely track its target date since it is far more likely that investors would need access to their investment at or near the fund's target date."¹⁸

¹⁶ Letter from Fund Democracy & Consumer Federation of America to Mary Schapiro, Chairman, Securities and Exchange Commission (Apr. 7, 2009) (on file with author).

¹⁷ Mary L. Schapiro, Chairman, Securities and Exchange Commission, Address to Mutual Fund Directors Forum Ninth Annual Policy Conference: Critical Issues for Investment Company Directors (May 4, 2009).

¹⁸ *Id.*

It is not an answer to say that misleading fund names can be cured with effective disclosures. Appropriate disclosures must be required and provided; but we must recognize, in determining appropriate investor protections, the reality that disclosures are very often not read and more often not fully understood. Despite our ongoing education and efforts to engage consumers in reading disclosures, CFP Board continues to hear from CFP® professionals who explain that their clients do not want to receive, let alone read, disclosure documents. Under current rules, a Target Date 2010 Fund could have an 80% stock/20% fixed-income allocation as long as the fund's extremely aggressive investment objectives and strategies are disclosed in the fund's prospectus. We believe that this is fundamentally misleading to investors and that no amount of disclosure is adequate to counteract the reasonable expectations created by a fund's name.

CFP Board believes industry standards for asset allocations in target date funds can and should be established to protect investors. The SEC can and should take steps to strengthen its securities regulations to protect investors from the use of misleading target date fund names. In 2001, the SEC adopted a misleading fund names rule—Rule 35d-1—that defines four types of funds for which the name may be materially deceptive and misleading. Because of the latitude under the rule for fund managers to correct misleading fund titles through disclosures in the fund's prospectus, the rule has not been enforced as to target date funds in a manner that provides adequate investor protection. We believe the SEC should amend Rule 35d-1 to provide that a target date fund's name is materially deceptive and misleading unless the fund's investments fall within an acceptable range of asset allocations consistent with its name.

We recognize that there are differing viewpoints among investment professionals regarding the appropriate allocation of assets as investors approach retirement, and agree that some variation is entirely appropriate and that there is no such thing as a “perfect” allocation. Nevertheless, we believe that appropriate ranges of asset allocations, based on reasonably accepted industry practices, can be established for each date reflected in a target date fund. The goal would be to align target date funds' glide paths and asset allocations with investor expectations—namely that a target date fund's glide path is designed to change *to* the target date. Establishing industry standards for asset allocations in target date funds is a reasonable undertaking. A panel of experts in retirement planning and investment allocation could be established from the financial services industry, including experts in ERISA, registered investment advisers, and CFP® professionals. They could be tasked with developing a schedule that lists acceptable ranges for categories of investments that are consistent with reasonable industry practices for each date reflected in a target date fund. The ranges of allocations would identify acceptable industry parameters that would reduce the fund's exposure to market volatility consistent with the fund's target date.

Establishing acceptable ranges of asset allocations for target date funds is especially important given that target date funds qualify as qualified default investment alternatives, also known as QDIAs, under the Pension Protection Act of 2006. The fact that the federal government has qualified target date funds as QDIAs sends two important messages. First, it conveys to employers that the government believes that the allocations in target date funds are appropriate for individuals based on their expected date of retirement. Second, qualification of

target date funds as QDIAs conveys to employees that the government is making an appropriate investment decision on their behalf. The presumption of government approval leads many investors to assume that their retirement funds are invested in a fund designed to ensure their retirement security. Yet without additional government guidelines, many default target date funds have proven to have inappropriate asset allocations for individuals approaching retirement age.

We urge the Special Committee to encourage the SEC and Department of Labor to establish appropriate protections to ensure that target date funds can continue to be used as QDIAs with confidence that they reflect appropriate, industry-sanctioned investment decisions on behalf of plan participants. While we commend the SEC and the Department for the actions they have taken to enhance disclosures to investors in target date funds, enhancing disclosures is not the sole answer and more must be done.¹⁹ In June of last year, we urged the Department to work with the SEC to put in place a process to develop accepted industry standards that would ensure that target date funds are not misleading to consumers on either extreme—too much cash for the young investor or too much equity for the investor near retirement. Should the SEC fail to move toward needed investor protections in the management of target date funds, we believe the Department should proceed on its own to regulate target date funds, or alternatively, should rescind such funds' eligibility as QDIAs.

VI. CFP Board Encourages the Agencies to Use Their Rulemaking Authority to Change Existing Messaging Regarding Appropriate Retirement Age

Another significant challenge to Americans achieving retirement security is the fact that a great many Americans retire from the workforce too soon. It is perhaps not surprising that Americans are living longer than ever before. In fact, “[f]or a healthy 65-year-old couple, there is a 67% chance that at least one of them will live to age 90 and a 38% chance that one will live to age 95.”²⁰ Notwithstanding increased longevity, a significant percentage of Americans continue to retire in their 50s and 60s. In fact, recent data from EBRI indicate that nearly 52% of workers expect to retire permanently from the labor force prior to age 65.²¹

Why exactly do Americans retire too soon? The answer to this important question is undoubtedly very complicated. Nonetheless, one likely contributing factor is that existing federal laws send a strong message to Americans that they should or can retire at an age that may be far too young, especially based on an individual's productive abilities and amount of savings. Approximately 65% of CFP[®] professionals surveyed agree that current federal laws setting social security eligibility at age 65 and the default normal retirement age for tax-qualified plans at 55 or 62 encourage people to retire too early. Moreover, nearly 50% agree that current federal laws allowing penalty-free withdrawals from tax-qualified plans at age 55 and mandating required minimum distributions after an individual attains age 70 ½ encourage people to retire too early.

¹⁹ See U.S. Department of Labor, EBSA Field Assistance Bulletin No. 2009-3 (Sept. 8, 2009), available at <http://www.dol.gov/ebsa/regs/fab2009-3.html>; Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, 74 Fed. Reg. 4546, 4564 (Jan. 26, 2009).

²⁰ Geoffrey Stiff, *When Your Client's Retirement Plan Is Washed Away, You Can Rebuild It*, ON WALL STREET (Dec. 1, 2009), available at http://www.onwallstreet.com/ows_issues/2009_12/when-your-clients-retirement-plan-is-washed-away-you-can-rebuild-it-2664635-1.html.

²¹ See Helman et al., *supra* note 2, at 28.

Notwithstanding the slight divergence in results regarding the extent to which existing federal laws encourage people to retire too soon, there can be little doubt that all parties involved would be well served by a review of existing federal rules to determine if, and to what extent, those rules may in fact send a message to America's workers to retire too early. To the extent those rules do, in fact, encourage individuals to leave the workforce too soon, CFP Board believes Congress should consider what changes are necessary to ensure that individuals are not incorrectly sent the message that they should or can retire when in fact personal circumstances (such as accumulated retirement savings to date, retirement goals, expected longevity, and productivity) indicate the contrary.

The ramifications of sending a message that encourages individuals to retire too soon cannot be understated. Such messaging may encourage individuals to choose to retire without a full understanding of their own expected longevity and/or the potential inadequacy of their existing retirement savings. Individuals who then retire may not realize until some later date that they should have in fact worked longer or that they have insufficient retirement savings. Moreover, for individuals in their 50s and 60s, getting back into the workforce is often very difficult, if not impossible. Even if such individuals are fortunate enough to make their way back into the workforce, it is often at a much-reduced pay and/or with new employers that may subject them to waiting periods and/or vesting schedules with respect to employer-sponsored plans in which they may seek to participate.

CFP Board acknowledges that changing current federal rules regarding retirement may be very difficult and, in certain instances, very costly. Nonetheless, CFP Board believes that the first step on the path to ensuring retirement security for all Americans is to make sure that we as a society are sending the right messages about retirement savings and security. One cannot, and should not, underestimate the role played by federal laws in this regard.

VII. CFP Board Supports Efforts to Curb Abusive Practices by Financial Intermediaries, Especially Those Involving Elderly Americans

In 2009 and 2010, CFP Board surveyed CFP[®] professionals as to whether they knew or had been approached by a client or prospective client who had experienced fraud or abuse at the hands of a financial advisor. Around 59% of the nearly 4,000 CFP[®] professionals who responded to the survey knew a client or prospective client who had been abused by an advisor. Over 41% reported that such abuse involved individuals between 61 and 75 years old—indicating that senior citizens are the most likely target of financial abuse. CFP Board received almost 1,600 stories of abuse calling into question practices performed in the financial services industry.

Examples of the most frequent instances of abuse include:

- An elderly woman, who was easily confused and suffering from some memory loss, attended a financial seminar by an individual calling himself a financial planner and was convinced to transfer all of her investments into annuities without being told that she would be unable to access the funds for many years except under heavy penalties.

- An 80-year-old married man, with an estate estimated at \$500,000, was sold an equity indexed annuity with a 17-year surrender period, leaving him unable to withdraw the funds without paying heavy penalties.
- An 87-year-old widow was convinced by an insurance agent/securities broker to sell her husband's blue chip stocks and buy a \$400,000 cash value life insurance policy and place the remaining proceeds in a trust that the insurance agent/securities broker controlled. The insurance agent/securities broker made loans out of the trust to himself and friends, leaving it virtually empty.
- A client's tax preparer, who claimed to be a financial adviser, tried to convince the client that he should borrow against his home and invest the proceeds into a variable annuity sold by the tax preparer.
- An individual calling himself a financial planner conducted a Ponzi scheme, convincing clients that their money "can't lose" through several investment vehicles. The money was never invested in anything.

Curbing abusive practices by financial intermediaries, especially those involving elderly Americans, is essential to enhancing the ability of all Americans to enjoy a comfortable retirement. CFP Board looks forward to working with the Special Committee on ways to address this issue.

VIII. Conclusion

CFP Board appreciates the opportunity to provide this statement to the Special Committee on Aging. If you should have any questions regarding CFP Board, the financial planners it certifies, or the CFP® marks, please contact Marilyn Mohrman-Gillis, Managing Director of Public Policy and Communications, at 202-379-2235, or visit CFP Board's Web site at www.CFP.net.