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Target Date Funds are Confronting a Growing Litigation Bulls-Eye

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The popularity of target date funds, or TDFs, retirement investment vehicles, has made them obvious targets for fiduciary breach class actions under ERISA. 29 U.S.C. §1001. The first round of TDF litigation began in earnest in 2022, when plaintiffs alleged that fiduciaries breached their duty of prudence because one TDF suite in their plan lineup underperformed relative to other TDFs.

Although many of these initial claims were unsuccessful, there has recently been a resurgence of similar cases, with over a dozen class actions filed just this year against fiduciaries whose plans offered a particular TDF series. In this second wave of class actions, plaintiffs again allege TDF underperformance demonstrated fiduciary imprudence. But unlike before, plaintiffs have beefed up their pleadings and lodged breach of the duty of loyalty claims, which may expose plan fiduciaries to greater risk of liability.

What are TDFs? Target Date Funds are one of the most popular retirement investment vehicles in the US. For example, American Century's One Choice 2045 Portfolio alone had over \$1.2 billion in assets under management as of July 31, 2026. *One Choice 2045 Portfolio*, Am. Century Invs. (last visited Aug. 7, 2026). And in 2025, 91% of retirement plans offered a TDF option, and 68% of plan participants invested in those options. Andy Stonehouse and Brian Anderson, *\$4.8 Trillion and Growing: Why Traditional TDFs Are Still Key to 401(k) Success*, 401k Specialist Mag. (May 6, 2026).

TDFs are investments intended to help defined contribution plan participants prepare for retirement over the course of decades. They are designed to let participants take a "set it and forget it" approach and are relatively user-friendly.

TDFs are commonly offered in ERISA-governed defined contribution retirement plans, such as 401(k) and 403(b) plans. Among other things, their growth in market share has been fueled by their frequent role as a default 401(k) plan investment option; the convenience of hands-off portfolio rebalancing for participants; and an overall gradual shift toward lower-risk investments.

TDFs are also popular because they start with higher-return equity investments, building a solid base before shifting to more conservative strategies. *What Is a Target Date Fund?*, Fidelity (Apr. 15, 2026).

TDFs also gained prominence following the Pension Protection Act of 2006 and the Department of Labor's related 2007 regulation, which added TDFs to the list of approved default investment options for a participant's 401(k) investment account. Class-action plaintiffs have widely alleged that because many participants don't change their default investments, this designation, paired with the rise of automatic enrollment, fueled substantial growth in TDF adoption and assets.

TDFs invest in various types of assets, and over time, as participants age toward an expected retirement date, or target date, TDFs automatically reduce allocation in higher risk, return-seeking assets like equities in favor of more conservative, lower risk bond-type investments. TDF investment vehicles may be structured as an investment suite or "fund of funds," meaning they invest in underlying funds rather than holding individual securities directly. An overall TDF strategy can employ active or passive management, or a hybrid of both approaches.

Glide paths are central to TDFs' design. The glide path guides how the TDF's asset allocation shifts over time. Generally, that means reducing equity exposure and increasing fixed-income exposure as participants near retirement to preserve wealth, limit downside risk, and hedge against inflation.

Most glide paths are designed to fall into one of two categories. "To retirement" glide paths shift into low-risk, flat-growth assets by the target date, while "through retirement" glide paths retain higher-risk, growth-oriented investments beyond the target date to support income needs throughout retirement.

Early TDF lawsuits were largely unsuccessful. Although cases targeting TDFs were rare before 2020, in 2022, one plaintiff's firm filed at least 11 lawsuits against various plan sponsors offering a particular TDF series. Why? The numbers aren't hard to track: It is estimated that by next year, TDFs will hold nearly \$5 trillion in assets. Ryan Ermei, *Investors Hold \$4.8 Trillion in These Retirement Funds — How to Choose One for Yourself*, CNBC (Mar. 24, 2026). One successful litigation could result in hundreds of millions in payout.

In this initial 11-case salvo, plaintiffs alleged that plan fiduciaries who offered a certain TDF series as a default investment breached their fiduciary duty of prudence because that fund performed worse than others. For instance, in a Northern District of California class action, a plaintiff alleged that a plan selected a TDF suite to chase the lower fees without adequate consideration of its overall investment performance. Plaintiffs offered comparator investments based on market share, which they alleged outperformed the selected TDF between 2016 and 2022.

Plaintiffs' theory found no traction in the courts. All but one of the initial 11 lawsuits, *Trauernicht v. Genworth Fin.*, were ultimately dismissed. No. 3:22-CV-532 (E.D. Va. Aug. 15, 2024), *rev'd and vacated*, 169 F.4th 459 (4th Cir. 2026). Even in the lone case to survive dismissal, *Genworth*, the US Court of Appeals for the Fourth Circuit recently vacated the district court's order granting class certification, relegating that case to an individual lawsuit. *Id.* A 2022 Sixth Circuit decision — *Smith v. CommonSpirit Health* — emphasized the two main weaknesses of the plaintiffs' theory. 37 F.4th 1160, 1168 (6th Cir. 2022).

For one, the *Smith* court explained, for an investment strategy operating over decades, the alleged period of underperformance was too brief to inform the plan fiduciaries' prudence. The court noted that the duty of prudence is more a "process-based inquiry" than outcome-driven. Following the plaintiffs' logic would require defendants to change investment options every year based on the previous year's best fund. But there are prudent reasons for retaining an investment through a period of underperformance.

Second, the court held that plaintiffs' alleged comparators were poor. For example, one comparator had "distinct goals and distinct strategies," and the plaintiffs didn't adequately allege how it was an appropriate comparator. *Id.* at 1167. This is the "meaningful comparator" or "benchmark" standard, which states that to allege imprudence based on

underperformance, the fund in question must be compared to one with sufficiently similar characteristics. Plaintiffs must allege enough facts about the comparator to show that it is a meaningful benchmark. *Id.* at 1168.

However, in *Johnson v. Parker-Hannifin Corp.*, the Sixth Circuit issued a conflicting opinion, holding that meaningful benchmarks do *not* have to be pled in all cases. 122 F.4th 205 (6th Cir. 2024). Addressing allegations of purportedly underperforming TDFs, the court held that, while helpful, a meaningful benchmark isn't *required* to plead imprudence.

This departure from other jurisdictions resulted in a circuit split that the Supreme Court decided to address, granting cert for a Ninth Circuit case that found meaningful benchmarks *were* required to state a claim for imprudent investments under ERISA, *Anderson v. Intel Corp. Inv. Policy Comm.*, 137 F.4th 1015 (9th Cir. 2025), *cert. granted*, 223 L. Ed. 2d 553 (Jan. 16, 2026).

Evolving TDF class actions continue to be filed. Not dissuaded by these early losses, the plaintiffs' bar is trying again in 2026. At least 40 cases have been filed so far this year, with at least 30 of those filed against fiduciaries who selected the same TDF series.

To date, many of the new-wave lawsuits await dispositive rulings, and the dispositions that have been rendered so far have been mixed — some pleadings have survived motions to dismiss, while others haven't. Generally, plaintiffs have tried to improve on the 2022 formula by pleading more allegations aimed at meeting pleading standards established in prior class actions, but it remains to be seen how many of these souped-up complaints will survive motions to dismiss.

These new cases repeat the themes of earlier TDF litigation — that the fiduciaries selected and retained TDFs that underperformed relative to various benchmarks. But plaintiffs have tried to beef up their allegations about appropriate comparators and benchmarks. In *Drell v. First Interstate Bancsystem Inc.*, for example, plaintiffs point to a broader set of comparative metrics, and make expanded imprudence allegations by noting that other plans have moved away from the TDFs at issue. No. CV-26-62, Complaint (D. Mon. July 18, 2026).

But even with more detailed pleadings, it is unclear whether the plaintiffs can craft TDF allegations that consistently meet the applicable pleading standards. In a putative class action filed in the US District Court for the District of Minnesota, the plaintiffs alleged fiduciary imprudence because the TDF in the plan lineup underperformed relative to other TDFs with respect to risk-adjusted performance, glide path, and investment philosophy. *Scholin v. Digi-Key Corp.*, No. 0:26-cv-01485, Complaint (D. Minn. Feb. 17, 2026). (The *Scholin* plaintiffs seem to have refiled their claims in the District of Minnesota, but that court has not yet rendered a dispositive ruling in that matter. No. 0:26-cv-03900, Complaint (D. Minn. Sep 4, 2026)).

Although these allegations were more robust than those alleged in the first wave of TDF litigation, the court found that dismissal was clearly warranted because the plaintiffs didn't allege sufficient facts about purported comparator investments. The court found the plaintiffs' allegations with respect to the comparison of the TDFs' glide paths and overall investment goals were insufficient. Similarly, the US District Court for the Western District of Arkansas dismissed a similar Complaint on the grounds that comparator allegations were also insufficient. *Hodges v. Washington Regional Med. Sys.*, No. 5:26-CV-05070, Complaint (W.D. Ark. Aug. 10, 2026).

On the other hand, the US District Courts for the District of Arizona and the Central District of California have determined that other plaintiffs' similar comparisons of glide paths and investment holdings *were* sufficient to survive the pleading stage. See *McGeathy v. Reinalt-Thomas Corp.*, Motion to Dismiss Denied (D. Ariz., Mar. 5, 2026) (stayed pending decision in *Anderson*); see also *Ventura v. Lithia Motors, Inc.*, No. 2:26-cv-01786 (C.D. Cal. June

2, 2026). These two district court rulings suggest that in this new surge of TDF cases, there will be a continuing battle fought on the extent to which comparator fund allegations are sufficient to support a claim of fiduciary breach.

Plaintiffs have also expanded their claims beyond just breach of the duty of prudence to include claims like breach of loyalty claims, alleging excessive fees tied specifically to actively managed funds, and added co-fiduciary claims naming investment advisors as co-defendants. For example, in *Goucher v. All Children's Health Sys*, plaintiffs allege that a TDF underperformed — a hallmark of the 2022 TDF cases. No. 8:26-cv-01781, Complaint (M.D. Fla. Jun 18, 2026).

But in *Goucher*, the plaintiffs additionally allege that the plan's investment adviser is a co-fiduciary that acted imprudently and charged excessive fees for its services. Plaintiffs also accuse the investment advisor of breaching the duty of loyalty by selecting funds that contained more expensive share classes when lower-cost share classes were available, generating excessive fees to benefit the retirement plan's broker at the expense of plan participants.

Plaintiffs' second, related breach of the duty of loyalty theory alleges self-dealing through the selection of proprietary or affiliated TDFs to benefit a plan's recordkeeper or investment manager rather than the plan participants. For example, in *Rivetti v. American Express Co.*, plaintiffs allege that TDFs directed significant assets to an investment management company with several business relationships with the plan's sponsor, including a credit card partnership and management of the sponsor's business debt. No. 1:26-cv-04082 (S.D.N.Y., May 16, 2026).

The plaintiff argued that selection of the TDF created a conflict of interest that violated ERISA's duty of loyalty requirements. Because this fact-specific theory is closely tied to particular business relationships, it remains to be seen whether the theory can be alleged in other cases, even if it survives a motion to dismiss in *Rivetti*.

A recent appellate case may also reshape the scope of class certification in TDF litigation. In March 2026, the Fourth Circuit reversed and vacated class certification for a group of employees who alleged that their employer breached its fiduciary duties by selecting and retaining certain TDFs. There, the plaintiffs had sought to certify a class of all participants whose individual accounts included investments in those TDFs.

After the US District Court for the Eastern District of Virginia granted plaintiffs class certification, the Fourth Circuit reversed because of the differences between defined benefit and a defined contribution plans. The court noted that defined contribution plans (like 401(k)s) allow for individualized investment control by participants in a way that defined benefit plans (like pensions) don't.

Therefore, certification of a class of *all* the 401(k) participants in the case was improper without determining how much each participant invested in which funds and for how long. The court also held that comparator funds must share a similar investment methodology with the challenged fund, meaning active funds should be benchmarked against other active funds and passive funds against other passive funds. *Trauernicht*, 169 F. 4th at 473–74.

Looking ahead, the US Supreme Court's upcoming decision in *Anderson v. Intel Corp.*, scheduled for the October 2026 Term, may address whether the Ninth Circuit's "meaningful comparator" pleading standards for fiduciary prudence claims is correct, and could significantly influence the trajectory of future TDF litigation. Although *Anderson* isn't specifically about TDFs, it will have significant implications for TDF litigation, where comparator allegations are frequently the main factual allegations supporting fiduciary breach claims. The *Anderson* plaintiffs have argued that adopting this standard would make TDF litigation impossible, but defendants and some amici have dismissed these concerns, pointing out that funds that are truly underperforming will underperform even appropriate comparators.

Regulatory developments affecting TDF fiduciary obligations. On March 31, 2026, the DOL proposed a new rule, *Fiduciary Duties in Selecting Designated Investment Alternatives*, to implement Executive Order 14330, which directed the issuance of guidance clarifying fiduciary duties under ERISA and reducing the litigation risk that has discouraged fiduciaries from offering alternative investment options.

Although the proposed rule isn't limited to TDFs, it would confirm that ERISA's duty of prudence is rooted in a fiduciary's process rather than in investment outcomes, a clarification that could undercut the outcome-based, comparator-driven litigation strategy currently dominating TDF suits. The proposal establishes a safe harbor built around a six-factor analysis covering performance, fees, liquidity, valuation, benchmarking, and complexity.

The DOL will compile and respond to the comments that were due June 1 and decide whether to publish or amend the final rule.

Key takeaways. Despite poor outcomes for plaintiffs thus far, TDF litigation isn't slowing down. As we continue to watch the new wave of TDF litigation, we are keeping a close eye on a few factors:

- **The most difficult bar for plaintiffs to clear remains alleging sufficient facts regarding alleged comparator investments to demonstrate fiduciary imprudence.**
- **The Supreme Court's decision in *Anderson* will likely have a significant impact on TDF litigation because the Court is expected clarify the pleading standard comparator allegations.**
- **As TDFs continue to grow in popularity, we expect to see even more TDF class actions.**

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