



Pamela Lewis Marlborough
Managing Director |
Associate General Counsel

1670 Broadway
Denver, CO 80202



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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE Washington DC
20549-1090

Re: Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice, File No. S7-10-21

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America (“TIAA”) welcomes the opportunity to submit these comments in response to the U.S. Securities and Exchange Commission’s (the “SEC” or the “Commission”) request for information and comments on broker-dealer and investment adviser digital engagement practices (“DEPs”) and related tools and methods (the “Request for Information”).¹ In recent years, DEPs have become an increasingly popular way for broker-dealers and investment advisers to improve their engagement with retail customers and enhance their service offerings. The widespread use of DEPs reflects retail customers’ growing reliance on and desire for digital tools to interact with their financial-services providers, including to conduct trading and obtain education and advice. We understand that the use of certain DEPs by broker-dealers and investment advisers presents potential risks to investor protection, and we applaud the SEC for seeking to understand and address those risks. We would stress, however, that DEPs offer a wealth of benefits that in many cases outweigh the potential risks, particularly with respect to DEPs that are offered for purely educational purposes.

Most Americans are not contributing enough to their retirement savings accounts to last them through retirement² – though studies conducted by TIAA show that retirement savers who have

¹ *Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice*, 86 Fed. Reg. 49067 (Sep. 1, 2021), available at: <https://www.govinfo.gov/content/pkg/FR-2021-09-01/pdf/2021-18901.pdf>.

² See, e.g., *Retirement in America: Time to Rethink and Retool*, PricewaterhouseCoopers (March 2021), available at: <https://www.pwc.com/us/en/industries/asset-wealth-management/assets/pwc-retirement-in-america-rethink-retool.pdf> (the “Retirement in America Report”); *Retirement Readiness among Older Workers 2021*, Insured Retirement Institute (Aug. 31, 2021), available at: https://www.myirionline.org/docs/default-source/default-document-library/iri-retirement-readiness-2021_fullreport.pdf.

a lifetime income annuity or pension have increased confidence about being financially secure throughout retirement.³ As the leading retirement-services provider for employees in the not-for-profit space, TIAA is committed to helping our participants save enough to get them to and through retirement. Providing financial education plays a key role in our effort to support our participants' retirement savings and readiness. We offer a host of digital tools aimed at educating our participants about how they should be saving and investing to reach their financial goals and last them through retirement. We believe these educational tools should be distinguished from other DEPs that are designed to encourage retail investors to enter into potentially risky transactions or engage in other types of speculative financial activity. Educational tools are fundamentally different from these other types of DEPs and we would urge the Commission to distinguish between the two types of tools in any future rulemaking. We also believe the current federal regulatory regime governing broker-dealers and investment advisers who provide education and advice to retirement plan participants, including over digital platforms,⁴ provides appropriate investor protection.

I. About TIAA.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions, retirement plan participants, and retail customers we serve and to provide financial products that meet their needs. Our investment model and long-term approach aim to benefit the over five million individual customers we serve across more than 15,000 institutions. To carry out this mission, we have evolved to include a range of financial services. TIAA provides education and advice to retirement plan participants through its dually registered broker-dealer and investment adviser subsidiary, TIAA-CREF Individual & Institutional Services, LLC, as well as asset management services offered by our investment arm, Nuveen, LLC ("Nuveen"), and its subsidiaries. While TIAA has expanded its offerings throughout our 100-year history, our core business has always been providing retirement services to our participants and the institutions that employ them. For that reason, we have a deep-rooted interest in any regulatory initiative that could impact our ability to educate our participants about preparing and saving for retirement and financial wellness more generally.

TIAA offers a range of digital tools designed to enhance our participants' financial knowledge and educate them about what and how they need to save to retire securely. These tools include financial calculators, retirement income illustrations, and quizzes aimed at testing and improving our participants' financial knowledge, among other things. Our research has shown that a critical need exists for expanded access to these types of educational tools in the financial-services sector. For example, in partnership with the Global Financial Literacy Excellence Center (GLFEC), TIAA conducts an annual survey called the P-Fin Index, which includes 28 questions

³ *TIAA 2021 Lifetime Income Survey* (Sep. 2021), available at: https://www.tiaa.org/public/pdf/2021_TIAA_Lifetime_Income_Survey_Executive_Summary.pdf.

⁴ This regulatory regime includes SEC rules, FINRA rules, and rules promulgated pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code, as amended.

on everyday financial topics, including earning, consuming, saving, investing, borrowing/managing debt, insuring, comprehending risk, and accessing sources of financial information.⁵ The P-Fin Index survey is designed to test respondents' financial knowledge and provides a good annual barometer of financial literacy among American adults. In 2021, TIAA found that respondents answered only half of the P-Fin Index survey questions correctly on average. The majority of respondents struggled most significantly with questions related to comprehending financial risk, answering only 37% of questions in that area correctly. Furthermore, the survey found (and other studies support this finding) that financial literacy among Blacks and Hispanics is disproportionately low across gender, age, income and education levels. Offering educational tools over our digital platforms is a crucial part of TIAA's efforts to address the gaps revealed in the P-Fin Index and expand the general financial knowledge base of our participants.

II. DEPs that are designed solely for educational purposes offer enormous benefits to investors.

DEPs are responsive to the demands, needs, and preferences of today's retail investors, offering access to a broad array of financial services through innovative means. In our experience, investors (particularly younger ones) increasingly prefer to engage digitally with their financial-services providers, and expect to have an array of online tools at their disposal to make their financial interactions easier. The use of DEPs gives retail investors greater access to a wide range of financial services and applications in a way that is appealing, easy to use, and takes advantage of the latest technology. DEPs can also strengthen the relationship between retail investors and their financial-services providers, expanding access to cost-effective customer service and providing more avenues for engagement and interaction in a compelling and user-friendly way.

In Question 1.8 of the Request for Information, the Commission asks whether firms are seeking to use DEPs specifically to increase investor education, and if so, how.⁶ In fact, many DEPs are designed to educate investors and enhance their financial literacy, an important goal given the gaps in many investors' financial knowledge. Digital educational tools can help investors make more informed investment decisions, encouraging them to assess potential risks and benefits before they enter into a transaction. These tools can also produce measurable beneficial outcomes, including by encouraging investors to save more towards retirement. This is an absolutely crucial point, given how many studies show that a significant percentage of Americans are still not saving enough toward retirement.

According to the most recent Retirement in America Report published by PricewaterhouseCoopers, a quarter of U.S. adults have no retirement savings, while only 36 percent feel their retirement planning is on track. Many of those individuals will likely fall short of meeting their financial needs through the entirety of their retirement – but this gap can be

⁵ TIAA-GFLEC Annual P-Fin Index Survey (Apr. 2021), *available at*: <https://gflec.org/initiatives/personal-finance-index/>.

⁶ 86 Fed. Reg. at 49070.

reduced through effective financial education.⁷ For example, providing investors digital tools that illustrate their projected future retirement income based on various rates of saving can help address this significant challenge. Notably, a participant survey published by TIAA in February 2021 showed that despite significant financial market volatility during the prior year, three in ten participants increased their retirement plan contribution rates during that period.⁸ When asked what had motivated their decision to raise their contribution rates, the most common motivators participants cited were the use of retirement income calculators and projections that showed what they could expect to make in retirement based on their current savings activity.⁹ These types of digital educational tools, which may include interactive retirement income projections, calculators that show how a participant's future retirement income will change based on contributions made today, and games or quizzes aimed at enhancing participants' general financial knowledge, can play a vital role in teaching participants about what they will need in retirement, in turn encouraging them to save more.

III. Educational DEPs should be distinguished from those designed to provide advice or prompt specific trading activity.

As a general matter, we agree with the Commission that the use of DEPs by broker-dealers and investment advisers carries both potential benefits and risks for retail investors. In particular, we echo the Commission's concern that "DEPs can potentially harm retail investors if they prompt them to engage in trading activities that may not be consistent with their investment goals or risk tolerance."¹⁰ Where a DEP encourages retail investors to engage in frequent trading, adopt inappropriately risky trading strategies, or trade in complex financial products, we believe the SEC should consider whether current regulations already prohibit such practices. DEPs that are designed solely to provide financial education, on the other hand, offer enormous upside to retail investors while posing minimal potential risk. This is especially true in the retirement space, where educating Americans about the importance of saving sufficiently for retirement is a matter of vital national importance. We accordingly believe it is important to distinguish educational DEPs, particularly those offered in the retirement context, from DEPs designed to prompt investors to enter into specific transactions or engage in other financial activity.

Educational DEPs have clear benefits, and importantly, they also involve far fewer potential risks than other types of digital financial tools. To the extent educational DEPs are not designed to prompt trading activity, they do not raise the sorts of investor protection issues the Commission identifies in the Request for Information. Without encouraging investors to enter into specific transactions, these educational tools pose little risk of encouraging activity inconsistent with an individual's investment goals or level of risk tolerance. These tools are also highly unlikely to prompt investors to engage in frequent trading, adopt risky trading strategies,

⁷ Retirement in America Report, p. 4.

⁸ *Retirement Insights Survey*, TIAA (February 2021), available at: https://www.tiaa.org/public/pdf/the_tiaa_retirement_insights_survey.pdf.

⁹ *Id.*, p. 3.

¹⁰ 86 Fed. Reg. at 49069.

or transact in complex instruments, activities which the Commission identified in the Request for Information as potentially problematic. The fact that educational DEPs do not “promote or otherwise direct retail investors to securities, investment strategies, or services that are more lucrative for the firm” offering the tools should mitigate the Commission’s legitimate concerns about potential conflicts of interest.¹¹ On balance, we believe the significant benefits of DEPs that are offered solely for educational purposes far outweigh the minimal potential risks to investors. In its review and in any potential rule proposal issued in the future, we would urge the Commission to distinguish these educational tools from other types of non-educational DEPs that raise legitimate investor protection concerns so as to avoid discouraging the use of these vitally important tools for retirement investors.

IV. The current regulatory regime for broker-dealers and investment advisers is sufficient to govern the use of educational DEPs.

We understand that one of the most important goals of the Request for Information is to help the SEC determine whether existing regulations adequately govern the use of DEPs by broker-dealers and investment advisers, or whether modifications or new rules are necessary to address potential investor protection concerns.¹² With respect to DEPs offered solely for educational purposes, we believe the current regulatory framework is sufficient to ensure that broker-dealers and investment advisers do not offer digital tools in a way that causes conflict of interest issues or endangers the financial interests of retail investors. The Commission appropriately recognizes in the Request for Information that federal securities laws and regulations, as well as FINRA rules for broker-dealers, already impose robust obligations, and many of these existing laws and regulations are “particularly relevant to the use of DEPs and related tools and methods by broker-dealers and investment advisers.”¹³ The Commission goes on to discuss a series of relevant obligations under existing regulations and SRO rules that apply to broker-dealers and investment advisers, including anti-fraud provisions, account opening and approval obligations, standards of conduct, disclosure obligations, reporting and recordkeeping requirements, and communications and marketing rules.”¹⁴

We appreciate the Commission’s recognition of the fact that broker-dealers and investment advisers are already subject to an extensive framework of rules and regulations that adequately govern the provision of DEPs offered solely for educational purposes. We believe a DEP that is purely educational should be viewed as an educational communication by a broker-dealer or investment adviser, thus subject to existing rules and regulations that require firms to be fair, balanced, and not misleading in their communications with investors. Given the robust regulatory framework for broker-dealer and investment adviser communications, as well as the relatively minimal risk of conflicts of interest or other investor protection issues arising where a

¹¹ *Id.* at 49070.

¹² *See, e.g.*, Questions 3.13-3.18, 86 Fed Reg. at 49078-79.

¹³ *Id.* at 49073-74.

¹⁴ *Id.* at 49074-77.

digital tool is solely educational in nature, we believe the current regulatory regime is more than sufficient to ensure that these offerings do not endanger investors' interests.

Where a DEP is offered to retirement plan participants, an additional layer of existing regulatory safeguards applies under ERISA. Firms that provide fiduciary investment advice to participants through a DEP are subject to a fiduciary standard of care pursuant to ERISA; a service provider's offering of a purely educational DEP, on the other hand, would not be subject to a fiduciary standard. In this regard, the Department of Labor ("DOL") published guidance in 1996 to help identify which activities do not warrant the application of a fiduciary standard under ERISA, using specific examples of activities that would be considered investment education, as opposed to advice.¹⁵ According to the DOL guidance, materials that inform participants about general financial and investment concepts or help participants estimate their future retirement income needs do not qualify as fiduciary advice for purposes of ERISA.¹⁶ We urge the Commission to refer to the DOL's approach and similarly distinguish educational DEPs from those designed to recommend specific financial activity in any future rulemaking. This will help preserve and promote retirement investors' valuable access to tools that educate them about the importance of saving for retirement and enhance their financial literacy more generally.

V. Conclusion.

TIAA appreciates the opportunity to comment on the Request for Information and highlight the importance of digital tools as a way to enhance retail investors' financial knowledge and illustrate the importance of saving sufficiently for retirement. The educational tools that TIAA offers via its digital platforms help us encourage our participants to save enough to last to and through their retirement. While we appreciate the Commission's concerns about the potential risks raised by some DEPs, we think these risks are minimal – and far outweighed by the benefits – in the case of educational DEPs. As such, in any future rulemaking on the topic, we would urge the SEC to distinguish between DEPs offered solely for educational purposes and those designed to prompt retail investors to engage in specific financial activity. We hope our comments are helpful as the Commission considers this important issue, and we welcome further engagement on any of the foregoing.

Sincerely,



Pamela Lewis Marlborough

¹⁵ *DOL Interpretive Bulletin 96-1; Participant Investment Education*, 61 Fed. Reg. 29586 (June 11, 1996), available at: <https://www.govinfo.gov/content/pkg/FR-1996-06-11/pdf/96-14093.pdf>.

¹⁶ *Id.* at 29589.