FRANKLIN TEMPLETON
INVESTMENTS

July 20, 2015

By U.S. Mail and Email (e-OED@dol.gov)

Office of Regulations and Interpretation
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Comment Letter on RIN 1210-AB32: Definition of the Term "Fiduciary"; Conflict of Interest Rule - Retirement Investment Advice

Dear Sir/Madam:

Franklin Resources, Inc. appreciates the opportunity to comment on the Department of Labor's (the "Department") proposed regulation defining who is a "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), or an individual retirement account ("IRA") under section 4975 of the Internal Revenue Code of 1986, as a result of giving investment advice to a plan, its participants, or to an IRA owner (the "Proposed Rule"). Franklin Resources, Inc. is a global investment management organization operating as Franklin Templeton Investments ("Franklin"). Headquartered in San Mateo, California, we employ over 9,000 people and have offices in 35 countries. Our common stock is listed on the New York Stock Exchange under the ticker symbol BEN and is included in the Standard & Poor's 500® Index. As of June 30, 2015, Franklin had assets under management of over $866 billion.

Franklin is a global provider of products and services to retirement clients, and manages over $200 billion in assets in the U.S. for individuals saving for retirement through defined contribution plans, defined benefit plans, IRAs and variable annuity products. Through our registered funds, collective investment trusts and other private vehicles, separate accounts, educational tools and research information, Franklin is dedicated to the investment needs of the U.S. retirement community during all phases of the retirement savings and distribution cycles. Franklin is committed to partnering with the entire retirement community - plan sponsors, plan consultants and advisers, and financial advisers to plan participants and IRA owners - to ensure that it offers products and services that meet the needs of investors saving for and in retirement.

Franklin, both directly and as a member of the Investment Company Institute ("ICI), the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG"), the Defined Contribution Institutional Investment Association ("DCIIA") and the American Retirement Association ("ARA"), supports the Department's efforts to ensure that retirement investors are protected with respect to the investments in their accounts. We write today to endorse the comment letters of these groups and to (1) express our concern about the breadth of the proposed definition of "fiduciary" and to provide examples of the unintended consequences that such a sweeping definition will have; (2) express our disagreement with the Department's approach to proscribing or endorsing certain investment products or strategies over others; and (3) provide examples of situations where the Proposed Rule would limit investor choice.

The Definition of "Fiduciary" in the Proposed Rule Is Overbroad And Has Unintended Consequences

We are very concerned about the broad scope of the proposed definition of fiduciary in the Proposed Rule and believe that it will sweep in communications where no reasonable expectation of a fiduciary relationship exists. One example is where an asset management firm seeking to offer its investment products to a plan is asked by the plan sponsor to respond to a "Request For Proposal" ("RFP") describing its products. Under the Proposed Rule, this communication could be deemed a "recommendation" and the firm, now deemed to be a fiduciary, would have to fit the communication under a carve-out or an exemption so as not to run afoul of ERISA's conflict of interest prohibitions. Whether the firm can provide this communication in reliance on the Proposed Rule's seller's counterparty carve-out exclusion is not clear. And even if the firm could, an identical communication to small or mid-size plans could not be provided, due to the exclusion's minimum threshold requirements based on plan size or number of participants.

Similarly, an asset management firm's ability to provide plan participants and IRA owners with educational materials, such as asset allocation and income generation tools that mention specific investment products, would no longer be excluded from the definition of investment advice, due to the Proposed Rule's narrowing of the Department's prior interpretive guidance on investment education, and would therefore trigger fiduciary status under the Proposed Rule. And a plan sponsor's ability to educate and communicate with participants about the plan's auto-features, such as auto-enrollment, auto-escalation and automatic mapping of certain investments to QDIA options, may also trigger fiduciary status under the Proposed Rule for the same reason described above.

These types of communications should not give rise to fiduciary status. Neither plan sponsors nor investors would reasonably expect that the firm would have been undertaking a relationship of loyalty merely by providing this information. Accordingly, the definition of fiduciary should be amended so that it would only apply where there exists a reasonable expectation that the communication constitutes investment advice that is being offered in a fiduciary capacity. Alternatively, we urge the Department to expand the counterparty and investment education exclusions to address the situations described above.

The Department Should Not Be Proscribing Or Endorsing Any Investment Product Or Strategy Over Another

We note that, based on the exemptions proposed in connection with the Proposed Rule, the Department appears to favor certain investment strategies or products that can be offered to retirement investors. For example, in order to rely on the "Best Interest Contract Exemption", a firm is only allowed to provide advice about an "asset" as defined in the exemption. This definition excludes many types of investments and thus could, for example, impact an asset manager's ability to offer institutional separately managed or unitized accounts to retirement plans as an alternative to other types of investment vehicles. This would result in the inadvertent exclusion of an otherwise appropriate and cost-effective product. The determination of whether an asset class, product or strategy is appropriate for a client should instead reside with the client or the person or entity that the client relies on for such advice.

Even more concerning, however, is the Department's consideration of a special exemption for "high quality and low fee" investments. While the Department does not define which investments would meet this standard, and instead is seeking input about how such an exemption would work, we are very concerned that such an exemption would effectively result in the Department determining whether a particular type of investment is better than another. It would be both unprecedented and inappropriate for the Department (indeed, for any governmental entity) to determine what constitutes a "high quality" or "low cost" investment.

Examples Of Where The Proposed Rule Limits Investor Choice

Another concern with the Proposed Rule is that it will impact the ability of a financial advisor to obtain certain types of compensation, including commissions and trail fees, from a fund that the advisor recommends to its clients. Under the proposal, for example, a financial advisor associated with a registered broker/dealer would be required to rely on the Best Interest Contract Exemption in order to recommend a fund from which the advisor receives a trail fee to an IRA client. Many such advisors are likely to decline to recommend these products due to the onerous requirements of this exemption (as extensively detailed in the comment letters submitted to the Department by the groups identified above), particularly the requirement to accept unlimited liability for any conduct that breaches the fiduciary standard. This would result in fewer choices for investors, without any meaningful increase in investor protection. (It is also important to note that these types of investment communications and recommendations are currently subject to extensive regulation by FINRA and the SEC.)

In addition, many advisors may go further and seek to limit the number and types of clients to whom they make investment recommendations. We note that recent rule changes in several jurisdictions outside of the U.S. that ban the payment by asset management firms of inducements to sellers of investment products and services, such as commissions or other compensation, have had this effect: recent studies have indicated that certain financial institutions are moving away from providing services to smaller investors because they are not being adequately compensated for such services, and consequently, many investors no longer have access to a broad range of financial advice.[1] In addition, studies have shown that smaller investors are unable or unwilling to pay directly for advice.[2] The Department's overly broad proposal, thus, will likely also result in a similar chilling effect on advice provided to U.S. retirement investors, particularly investors that do not have large enough account balances to open a fee-based account with an advisor, or who otherwise choose not to do so.

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Based on our views as well as those of the industry groups that we support, we urge the Department to consider these comments and tailor the rule more appropriately to protect retirement investors while preserving investors' access to valuable information about investments and ability to choose the types of products and services that are right for them. Thank you for your consideration.

Sincerely,

Craig S. Tyle
Executive Vice President and General Counsel

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[1] See, e.g.,"Restricting Sales Inducements: Perspectives on the Availability and Quality of Financial Advice for Individual Investors", CFA Institute, December 2013.

[2] Id.; See also "Retail Distribution Review: Post Implementation Review", Europe Economics, 16 December 2014