



April 17, 2017

Filed Electronically

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**Re: Examination of the Fiduciary Rule in Accordance with the President's  
Memorandum (RIN 1210-AB79)**

Dear Sir or Madam:

I welcome this chance to share Putnam Investments' comments as the Employee Benefit Security Administration ("EBSA") of the Department of Labor (the "Department") considers the questions raised by President Trump in a Memorandum dated February 3, 2017 (the "Presidential Memorandum").

Putnam Investments is one of the pioneers of America's mutual fund industry, with \$160 billion under management today on behalf of over 100 institutional clients and 4 million individual customer accounts. Putnam's investment products for the Defined Contribution (DC) and Individual Retirement Account (IRA) markets are almost wholly distributed through financial intermediaries. We work with firms that employ a variety of business models, from traditional broker-dealers, to independents, to bank channels and registered investment advisers.

We provided comments in 2015 on the Department's re-proposed regulation. In our letter, we expressed our agreement with the goal of the fiduciary rule – that investment providers to retirement investors act in the best interests of their clients – but also outlined significant concerns with many aspects of the proposal. In the time since our 2015 comments, on April 8, 2016, the Department finalized the fiduciary rule (the "Fiduciary Rule" or "Rule"). The final Rule addressed, at the margin, a small subset of our comments and those of other industry participants, but it remains subject to significant flaws that, in our view, threaten to undermine our shared policy goal – to encourage retirement savings – and to harm the very individuals that the Department aims to protect. In particular, in finalizing the Rule, the Department largely ignored the many criticisms of its cost-benefit analysis raised by the Investment Company Institute, the U.S. Chamber of Commerce, and a variety of other observers.

Given the challenges posed by the final Rule, confusion and uncertainty have prevailed in the retirement marketplace during the intervening months since finalization, as financial firms have struggled both to interpret the Rule and to determine what products and services they can reasonably continue to offer to their retirement customers. At the same time, EBSA has offered late, limited and, in many cases, unclear or unhelpful guidance on the Rule, further deepening the difficult challenge ahead.

In the Presidential Memorandum, President Trump instructed the Department to determine if the Fiduciary Rule adversely affects the ability of Americans to gain access to retirement information and financial advice. The Presidential Memorandum also asks the Department to prepare an updated economic and legal analysis, taking into consideration a number of factors. If the Department determines that the Fiduciary Rule is inconsistent with the priorities outlined in the Presidential Memorandum, it is instructed to rescind or revise the Fiduciary Rule. We believe the questions in the Presidential Memorandum should be answered in the affirmative, and the Department should consider rescission or significant revision.

Our comments are listed below as responses to the questions in the Presidential Memorandum. Please note that additional details and examples can be found in the comment letters being submitted by our affiliated firms, Empower Retirement and Great-West Financial, whose comments we endorse fully.

**Question 1: Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice.**

As stated in our 2015 comments, we wholeheartedly agree with the expressed intention of the Fiduciary Rule. The best interests of retirement savers should always come first. The real question, however, is how best to achieve that goal through a set of clear, certain, well-coordinated and effective rules that can be implemented cost-effectively, and without unintended consequences that could outweigh their benefits.

In our view, the Fiduciary Rule falls short. To the contrary, the Rule would raise costs and confusion across the entire workplace savings system – ultimately at the expense of retirement savers. Access to meaningful investment information, guidance and education that retirement savers need to make decisions would, at best, be seriously inhibited and, in many cases, eliminated. Litigation risk could explode. So could the perverse result of increased inequality – as lower-income clients lose access to advice that highly-affluent customers will surely continue to pay for and benefit from.

At least two other key public policy goals would be set back by the Rule.

- First, the expansion of workplace savings coverage to the tens of millions of Americans who lack such plans on the job today would likely be stymied by rising costs, compliance and litigation risk. This would aggravate the “access gap”, the single most serious failing in U.S. workplace retirement policy today.

- Secondly, the provision of more lifetime income options, whether annuities or insured draw-down options within workplace plans or at the point where participants “roll-over” assets to Individual Retirement Accounts (IRAs), would face similar cost and litigation-risk headwinds. Innovation in that arena could slow or stall.

A few examples illustrate our concern.

**\*Loss of access to financial advice broadly.** The requirements of the Best Interest Contract Exemption (“BIC”) have led many financial intermediaries to begin restructuring their business models. Some firms have determined to cease offering commission-based accounts in the retirement space entirely. For other intermediaries, commission-based accounts may continue to be available, but the increased costs and risks associated with complying with the Rule are likely to lead to abandonment of smaller balance accounts. Minimum balances will also apply to advisory accounts in the retirement space, and savers with lower balances will be routed to self-directed programs – losing the value of advice entirely -- or “robo-advice” programs, which may offer a poor substitute for the critical personal interactions that can calm investors in turbulent markets and keep them focused on their long-term goals. Some intermediaries also appear poised to abandon certain accounts entirely as direct positions at a fund family’s transfer agent, leaving impacted investors without a financial advisor and effectively orphaned without guidance – a result that suits no one.

The overall cost of financial advice, in our view, is likely to increase for many customers who are in a position to continue receiving it – and, for many others, it may simply no longer be available. The Rule, combined with the absence of a practical, helpful exemption, may indirectly push savers toward a single model — fee-based advice from an ERISA fiduciary. Some retirement investors already obtain advice in exactly this way – but, in a diverse market including investors with differing needs, investment approaches, and account sizes, the model is not for everyone. We fear that many smaller IRA investors and plans will simply no longer be able to obtain the help they need. In addition, it is important to keep in mind that fee-based advice, for some investors, can be more expensive than commission-based advice – where choice is lost, some investors will suffer.

**\*Loss of access to a broad array of financial products.** The BIC’s strict emphasis on “equalizing” or “leveling” compensation from third parties across a firm’s offerings, even where different fund products may vary in complexity and/or require differing levels of service, has already begun to lead to a consolidation of the investments available to retirement savers. Many large financial intermediaries, faced with an uncertain and exacting new standard around potential conflicts, may feel compelled to offer only products that offer precisely identical economic features, such as sales charges, exchange features, and ongoing compensation for various services provided by the intermediary. As has been widely reported in the financial press, this dynamic has resulted in market demand for fund providers to launch new share classes, such as “Class T” shares, that can be used for all options on an intermediary’s platform, regardless of fund family, asset class, complexity, or associated educational/servicing needs. For other intermediaries, so-called “clean shares” may prove a viable choice – but much work remains before the industry is in a position to complete its analysis and implement these new arrangements.

The profusion of share classes raises costs, both for fund providers and the intermediaries who sell their products. More critically, though, the homogenization of share class offerings – and

of fund offerings-- also risks limiting investor choice. Not all fund families will be in a position to support the demand for new share class arrangements, and the Rule's overly broad push toward uniformity may lead to a dramatic culling of investment products (and fund families) available at intermediary firms. While some culling of investment options may be a natural outcome of market trends, the Rule is a clear factor – and we strongly believe that market evolution, not regulatory fiat, should drive product evolution. A more flexible Department standard around conflicts, permitting compensation to differ in a broader range of circumstances than would be allowed under the narrow “neutral factors” analysis set out by EBSA, would serve well to address the potential conflicts involved in financial advice, without forcing industry participants into lockstep and reducing consumer choice in the bargain.

The Department should not take any steps that would prevent the free flow of ideas and innovations which, in a fiercely competitive marketplace like the U.S. retirement system, will ultimately work to consumers' benefit.

**\*Loss of access to appropriate information on rollovers and other savings choices.** Retirement investors need information in order to make decisions. Under the Rule, many types of baseline investment information that we and other firms make available to the public and to prospective clients, including general educational pieces and market discussions, could potentially be characterized as “fiduciary” advice. Likewise, some of the most basic of interactions between our call center employees and our fund investors could trigger a web of technical ERISA rules. In particular, financial firms must be allowed to continue to provide participants with information about the important decision to roll assets to a new plan or IRA or withdraw them. Without a workable path for financial firms to assist customers at this critical juncture, we may see an increase in assets leaving the retirement system – to the detriment, most importantly, of working families. As drafted, the Rule's definition of fiduciary advice is pitched broadly, and creates substantial uncertainty over how even the most basic of conversations about a saver's choices can take place without the possibility that fiduciary status is triggered. In many cases, fund providers and other parties that currently provide basic information to inquiring customers – with appropriate training and disclosure, so that it's apparent that no recommendation is being made – fill a key role in ensuring that retirement savers make the right choices for their long term futures. Under the Rule, providing much of this information may no longer be practical.

Instead of subjecting most rollover conversations to fiduciary status, the Department should seek to define more clearly (and broadly) the boundaries of what may be said and done by a financial firm in this context without triggering fiduciary status. The analysis should come down to the facts and circumstances – against the policy background of our shared desire to encourage savings and prevent loss of assets from the retirement system. Otherwise, we believe that investors will experience a meaningful loss of valuable information at a key nexus in their savings journey.

**Question 2: Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees.**

It would be difficult to exaggerate the uncertainty that has prevailed within the retirement industry in the months since the Department's April 2016 release of the Rule. Although the release stated that the intention of the BIC exemption was to permit continued receipt of common forms of

compensation, such as 12b-1 fees, in practice, the Rule calls into question the entire structure of commission-based financial advisor compensation -- a structure developed under the regulatory oversight of the federal securities regulators, including the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority, over a period of decades and shaped, in many respects, by specific rules under the Investment Company Act of 1940.

As a fund provider, we have experienced these disruptions first hand, as our intermediary partners have sought our opinions and asked that we work with them on possible new share class structures to facilitate their new offerings. In many cases, ideas and requests have evolved rapidly, even within a single intermediary firm, as firms continue to evaluate the Rule and consider the right products for their customers as best they can in an environment of uncertainty. This confusion has been exacerbated by late and impractical, unhelpful guidance from EBSA – but the Department is not the only regulator involved in this transition. Much of what financial firms have asked of Putnam and their other fund family partners – new share classes, or firm-specific terms allowing enhanced control over pricing – has required new guidance from the SEC staff, who, along with the fund industry, have worked carefully to apply long-standing Investment Company Act provisions in new ways to meet the demands of the Department’s rulemaking. This dynamic re-emphasizes the unique nature of the Rule – which, in many respects, is indirect substantive regulation by the Department of financial products and services that are outside its traditional purview and in the regulatory wheelhouse of the SEC. Quite simply, the Rule effectively has demanded new guidance under the SEC’s rules, and the need to wait for that guidance has led to additional disruption and delays in implementation. This process, combined with market pressures, uncertainty as to the future of the Rule, and inadequate guidance, have added to the industry’s implementation challenges.

We do not believe that these disruptions are merely temporary and transitional, or that they are limited to fund providers and financial intermediaries. There is a real risk that firms simply do not have time to arrive at an optimal solution on the current timeframe for their customers. Even more critically, for all the reasons stated in our response to Question 1, the finalization and implementation of the Rule as currently drafted will lead to real losses to investors – ultimately, the disruption will be shared by all.

**Question 3: Whether the Fiduciary Duty Rule is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.**

By creating a new private right of action applicable to IRAs, the Fiduciary Rule will, by definition, increase the likelihood of litigation. Likewise, as more advisers become fiduciaries to retirement plans, more individuals and firms will become subject to potential ERISA claims. The current focus of a subset of the class action plaintiff’s bar on the retirement industry is well-documented. But the key point is not simply that more litigation is likely to arise – but that, through its broad, general drafting and subjective standards, the Rule creates a playground for meritless lawsuits.

It is important to keep in mind that the BIC’s status as a prohibited transaction exemption has the effect of shifting the burden of proof to a financial firm defending its practices. How can a financial firm that charges a fee, however well-intentioned and careful, be certain that it can

demonstrate that a representative has acted “without regard to [his or her] own interest,” as the Rule demands? How sure can a financial firm be that its carefully designed compliance policies, or each element within the elaborate, duplicative disclosures required by the BIC, will be judged as adequate? In contrast to other areas of the federal securities laws, where decades of precedent, informed by guidance from regulators with specific subject matter expertise, inform a court’s review, the Fiduciary Rule risks opening a new avenue of litigation without meaningful criteria to sort between proper challenges and meritless claims.

If the Department believes a new enforcement mechanism for the IRA world is necessary, it should seek to create that mechanism, rather than delegating enforcement to the uncertainties and unnecessary costs of self-interested private enforcement against a blank interpretive canvas.

### **Final Rule: Extension of applicability date**

We would also like to take this opportunity to comment on the Department’s final rule extending the applicability date of the Fiduciary Rule for 60 days, or until June 9, 2017 (82 Fed. Reg. 16902 (April 7, 2017)). We welcome the delay, but would also urge that the Fiduciary Rule not become applicable until after Department has properly completed the examination called for in the Presidential Memorandum and published (if it so concludes) a proposed rule revising or rescinding the Rule.

We were disappointed that, in some respects, the Department’s release appears to presume that the examination called for by the Presidential Memorandum will not result in fundamental changes. While paying lip service to the importance of not prejudging the results of the examination, the release appears to signal in a variety of passages that the Department’s staff (currently acting without the benefit of a sitting Secretary of Labor) does not currently expect to see any meaningful changes result. We urge the Department to take this chance to review the Rule fully, consistent with the spirit of the Presidential Memorandum -- including reviewing the flawed economic analysis deployed in the Department’s work to date. To do anything less would be to put the cart before the horse, and to short-change our nation’s retirement savers.

We are concerned, in particular, with the Department’s decision to allow the Rule to go into effect prior to the completion of the mandated review, which risks inherently prejudging the ultimate analysis. As discussed above, the Fiduciary Rule will carry very real costs – costs that the Administration is clearly aware of and concerned with, as evidenced by the Presidential Memorandum. In our view, allowing the Rule to go into effect in June, so that any changes that may arise from the Department’s further analysis will take place after firms have already made their implementation choices, and are therefore certain to cause further confusion and disruption for retirement savers, clearly runs contrary to the intent of the Presidential Memorandum, as well as to common sense. The Department indicates that “...following completion of the examination, some or all of the Rule and PTEs may be revised or rescinded, including the provisions scheduled to become applicable on June 9, 2017.” We believe that revision or rescission is appropriate. However, to make such changes months after the Rule becomes effective would lead to confusion, sunk costs and wasted resources that could easily be avoided by delay of the Rule as a whole. We strongly urge Department to take the common-sense step of not permitting the Fiduciary Rule or its related Prohibited Transaction Exemptions to become effective prior to the full completion of the examination mandated by the Presidential Memorandum.

**We do strongly support EBSA's policy goals: ensuring that investment providers to retirement investors act in the best interests of their clients.** But we believe that the Rule, as currently drafted, would likely have the unintended consequence of damaging the America retirement system as a whole.

We urge the Department to consider carefully the comments it receives, conduct a fresh and robust review of the Rule, as required by the Presidential Memorandum, and move forward with a revised approach that recognizes that advice can be valuable, seeks to remain neutral across legitimate advisor business models and investment product choices, and focuses on the core issues at hand, while avoiding unnecessary complexity and cost.

Sincerely,

A handwritten signature in black ink, reading "Robert L. Reynolds". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

Robert L. Reynolds  
President and CEO, Putnam Investments