March 16, 2017

Edward Hugler
Acting Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted via the Federal Rulemaking Portal **www.regulations.gov**

Re: RIN 1210-AB79 — Proposed Rule on the Extension of the Applicability Date of the Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

Dear Mr. Hugler:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. We are writing in support of the proposal to delay the applicability date of the new definition of the term fiduciary and the conflict of interest standard concerning retirement investment advice by 60 days, which was published in Volume 82, number 40 of the *Federal Register* on March 2, 2017.

The members of NAHU work on a daily basis to help millions of individuals and employers purchase, administer and utilize health insurance coverage, including the increasingly popular employer group benefit option of qualified high-deductible health plan (HDHP) coverage coupled with a Health Savings Account (HSA). Unless the applicability date of this rule is postponed and either additional guidance from the Department of Labor about the application of the rule to HSAs is issued or the rule itself is rescinded or amended, NAHU believes it will have a chilling impact on employee access to HSAs.

By expanding the definition of plan fiduciary to cover not only service providers who assist employers and employees with Individual Retirement Account (IRA) options, but also those who assist with HSAs and Archer Medical Savings Accounts (MSAs), including providing advice on a one-time basis, this new rule creates unprecedented new compliance responsibilities and liabilities for employers and licensed health insurance agents and brokers. NAHU is very concerned that, once the rule is fully applicable, employers and health insurance agents and brokers will be unwilling to accept this new liability and will instead simply eliminate group HSA access for millions of Americans in favor of other benefit options that may be less advantageous to employees.

Our association believes it is inappropriate to cover and treat HSAs and MSAs under the proposed regulation in a manner similar to IRAs as to both coverage and applicable carve-outs. We intend to submit detailed comments about how the final fiduciary rule is going to adversely affect the ability of Americans to gain access to information and financial advice about HSAs specifically under separate cover. NAHU members believe that the provisions of the final fiduciary rule that are applicable to HSAs and MSAs should be stricken in order to protect all health insurance consumers' access to these popular and cost-saving health coverage options. However, if that is not possible, NAHU believes that for the employer-based HSA marketplace to ultimately continue, additional guidance about the applicability of this regulation to employers that offer HSA options to their employees and to their licensed advisors is sorely needed.

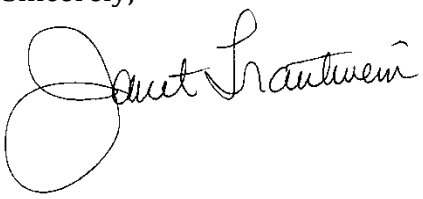
Since the regulation revising the definition of plan fiduciary and creating a new conflict of interest standard became final in April 2016, the DOL has been formally and informally promising all of those involved in the group HSA marketplace that additional guidance would be forthcoming and would outline exactly how the regulation would be applied relative to HSAs. This guidance is needed because, for most licensed health insurance agents and brokers who routinely sell and service employer group qualified high-deductible health plan products that can be combined with HSAs, the new regulation appears to expand their potential liability into completely new territory. Depending on how this rule is applied, it could necessitate completely different business standards, interactions, contract structures and payment methodologies with their clients. Based on NAHU's analysis of the rule, it does seem that many brokers who sell and service HSA-compatible group health insurance products and facilitate related HSA establishment and contributions might be able to avoid triggering fiduciary responsibility by limiting the amount of information and education they give to employees about HSAs. However, the triggering standard with regard to the kinds of education that can be provided to plan sponsors and participants is vague and confusing. Any employer offering a group HSA option in conjunction with HDHP coverage would be liable for making the determination if the fiduciary standard was triggered using this vague and confusing regulatory language. Unless clear guidance is issued before the application of the final rule, many licensed agents and their employer clients will be unwilling to accept the potential risk associated with offering HSA options in the plan years ahead.

Unfortunately, to date, no fiduciary guidance has been issued by DOL specific to the HSA marketplace. The lack of information has left employers and their licensed insurance producers very uncertain and has made it impossible for health insurance agents and brokers to advise their clients how the service they may provide to employers and employees will be considered. This has already impacted employer planning relative to potential HSA coverage options that may be offered to employees in the 2017 plan year and beyond, and it has impacted the willingness of agents and brokers to remain in the HSA business generally for the plan years ahead. More certainty and guidance for employers and licensed health insurance agents and brokers is desperately needed before this rule becomes fully applicable or the entire group HSA marketplace will be at risk.

NAHU strongly supports the proposed 60-day delay in the applicability date of this significant regulatory change. We urge the Department of Labor to use the additional time to develop detailed guidance about how this regulation will impact the HSA marketplace. This guidance should be geared toward both employers that offer their employees assistance in creating a HSA to go along with employer-sponsored qualified HDHP coverage options and the licensed insurance professionals engaged by employers to advise them and their employees on HSA (and also possibly MSA) establishment. The content should directed at helping employers and licensed advisors determine exactly what service actions may be performed for employers and individual employees establishing HSAs before triggering the standard of a plan fiduciary, perhaps in the form of a series of frequently asked questions with detailed examples. Without this type of guidance from the Department setting bright lines for licensed advisors and employers, NAHU believes that the application of this rule will incent employers to drop their HSA-compatible coverage options and group HSA support as an employee benefit in favor of other options requiring less compliance responsibility and liability, even though those options might be less financially advantageous for employees.

NAHU sincerely appreciates the opportunity to provide these comments on the proposed rule. If you have any questions, or if NAHU can be of further assistance to you, please feel free to contact me at 202-595-0787 or jtrautwein@nahu.org.

Sincerely,



Janet Trautwein
Executive Vice President and CEO
National Association of Health Underwriters