June 9, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Submitted via *comments@fdic.gov*

RE: RIN 3064-AE94

Dear Mr. Feldman:

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 benefits specialists. We are writing in response to the notice of proposed rulemaking (NPR) on brokered deposits. The members of NAHU work daily 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).

Our association appreciates the chance to comment on the proposed rule, and we respectfully request clarification that HSAs will be exempt from this measure. This clarification in any final rule is very important because HSAs are an integral part of employer-sponsored health insurance coverage for over 20 million Americans. Under federal law, an HSA is a "trust" or "custodial account" administrated by a trustee or custodian.[1] Trustees or custodians must be banks, insurance companies or entities credentialed by the Treasury Department to act in this capacity. HSA custodians and trustees are not primarily responsible for placing funds in deposit institutions. Instead, HSAs are owned by individual account holders who retain lifetime access and control of funds and the account, even after they cease to be enrolled in the corresponding HDHP. An employer or other third party may never own or control an HSA.

HSAs have annual contribution limits, which, in 2021, will be $3,600 for individuals with self-only coverage and $7,200 for those with family coverage. Account holders who are 55 years old and older may contribute an additional $1,000.[2]

[1] 26 U.S.C. § 223 and 408; 26 C.F.R. §1.408-2.

[2] IRS [Revenue Procedure Notice 2020-32]

1212 New York Avenue, NW, Ste. 1100 • Washington, DC 20005 • 202-552-5060 • www.nahu.org

While individually held accounts, HSAs can only be obtained if an individual also has a qualified high-deductible health plan, typically offered through an employer-sponsored group benefit plan. Over the past 10 years, implementation of the Patient Protection and Affordable Care Act (ACA) has changed employer plan design, placing an increased emphasis on high-deductible plan choices for group health plan participants. Coupling a qualified high-deductible plan with an HSA is currently a desirable option for both employers and employees to offset high employee out-of-pocket costs and encourage responsible consumerism. According to America's Health Insurance Plans survey data, in 2018, 21.8 million employees enrolled in qualified high-deductible health plans paired with an HSA via an employer group benefit arrangement. Since the ACA passed in 2010, this market segment has more than doubled in volume.[3]

HSAs are heavily regulated, and so are HSA fund distributions. HSA deposits and accounts do not involve large sums of money, nor are they the type of account where all of the funds are regularly withdrawn at the same time or transferred elsewhere. While HSA funds can be used to fund medical costs and other expenses in retirement, they are typically low-balance accounts used and viewed by employees as a shield against high out-of-pocket costs in their current-year medical plans. According to the Employee Benefit Research Institute, which developed the EBRI HSA Database to analyze individual behavior in Health Savings Accounts and has been tracking and reporting on this behavior since 2012, 9.8 million accounts with total assets of $22.8 billion have identified and tracked since December 31, 2018. At that time, the average HSA balance among account holders with individual or employer contributions in 2018 was $2,919. Overall, 59 percent of HSA holders withdrew funds. The average annual amount distributed was $1,865 in 2018, implying an average rollover of $1,054. Only six percent of HSAs contain any invested assets beyond cash.[4] All of this data shows that HSAs are small, stable and tax-advantaged accounts that provide great value to many Americans. They are limited in purpose and use; it would in no way be practical to use HSAs as a vehicle to avoid other banking regulation.

The preamble of the proposed rule discussed exemptions that would cover HSA custodians, but the language of the rule does not provide clarification as to how these exemptions will be implemented. We

---

[3] America's Health Insurance Plans. (April 12, 2018) "Health Savings Accounts and Consumer-Directed Health Plans Grow as Valuable Financial Planning Tools." www.ahip.org/2017-survey-of-health-savings-accounts/

[4] Employee Benefit Research Institute. (January 9, 2020). "Trends in Health Savings Account Balances, Contributions, Distributions and Investments, 2011–2018: Estimates from the EBRI HSA Database." www.ebri.org

feel strongly that an HSA custodian qualifies for this exemption and the final rule should affirm this interpretation.

NAHU sincerely appreciates the opportunity to provide information about the adverse impact the proposed rule could have on the HSA marketplace. We hope that it will be helpful to you as you work to make improvements to the banking system. 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