



September 18, 2017

Larry Good
Executive Secretary, ERISA Advisory Council
United States Department of Labor
200 Constitution Avenue NW
Suite N-5623
Washington, DC 20210

Submitted electronically via good.larry@dol.gov

RE: 188th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans

Dear Mr. Good:

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. The members of NAHU work on a daily basis to help businesses purchase, administer and utilize health insurance coverage. As such, our association appreciates the willingness of the 2017 Advisory Council on Employee Welfare and Pension Benefit Plans (Advisory Council) to seek comments from stakeholders about the critical topic of reducing the burden and increasing the effectiveness of mandated disclosures concerning employment-based health benefit plans in the private sector.

NAHU members help businesses of all sizes offer and manage both fully insured and self-insured group coverage options. As part of their work, NAHU members routinely advise their employer clients about the compliance obligations associated with operating a group health insurance arrangement with both state and federal laws and related regulatory requirements. Our members report that ensuring full compliance with the benefit plan disclosure and reporting requirements associated with the Employee Retirement Income Security Act of 1974 (ERISA) and its related amendments is one of the most challenging areas for employer group plans to navigate. For smaller employer groups, the challenge is acute, but for business groups of all sizes, ERISA compliance is still confusing and costly. Despite the best intentions of both the law and the business owner, the result is often less than meaningful to the employees that the law is designed to protect.

As per the Advisory Council's notification published on September 7, 2017, in Vol. 82, No. 172 of the Federal Register, you are requesting comments on three proposals: (1) the elimination of the Summary Annual Report requirement for health benefit plans not already exempt, (2) the consolidation of each of the various annual notices into a single annual notice issued in a standard format, and (3) the



modification of the Summary Plan Description (SPD) requirements to allow a short resource reference tool updated annually. NAHU supports each of these proposals, and we ask the Advisory Council to consider addressing a fourth recommendation: trying to create and modernize cohesive rules concerning electronic distribution relative to ERISA disclosure requirements.

NAHU agrees that the current requirement for some health plans to develop and distribute a summary annual report based on its Form 5500 filing should be eliminated for health benefit plans that are not already exempt. This document is virtually meaningless to most employees and annually preparing it creates an unnecessary burden for affected plans. Any employee who needs Form 5500 data may access complete data through public filings already and, in the experience of our members, a genuine need for this summary report information for consumer-protection purposes is rare to the point of being nonexistent.

NAHU also strongly backs the concept of consolidating all ERISA disclosures into a single notice to be distributed annually. Currently, the broad range of notice distribution due dates, as well as various delivery mechanisms and formats for disclosure, is confusing to both employers and employees alike. Companies often make compliance mistakes in this area unintentionally, and employees do not benefit from a multitude of paper notices provided at different points during the plan year. If the Advisory Council moves forward with this proposal, NAHU encourages you to extend the effort to both notices that must be delivered distinctly and notices that may be included as part of the greater plan documents. Furthermore, we suggest the development of a comprehensive model notice template that all employers could adapt for their use and the creation of related official compliance education resources geared at employers of all sizes.

With regard to the proposal to modify SPD requirements to allow for employers to create and distribute a concise reference tool for employees to be updated annually, NAHU agrees that there is a need for such a tool. We also support its goal to guide participants and beneficiaries to source materials to answer any questions regarding the plan's contents, their rights and additional relevant information. Along with this idea, NAHU asks the Advisory Council to consider the development of more official compliance resources for employers to use relative SPD development and updates. The SPD provides a critical legal framework for any benefit plan, and it should be a valuable resource for plan beneficiaries. Right now, the lack of official templates, compliance resources and education about SPD requirements hurts both employees and business owners. Employers often do not comply or fully comply with SPD rules due to a lack of understanding and appropriate resources. Businesses also often contract out their SPD-development process, and they have no efficient and cost-effective means to measure the quality of the documents they purchase, often at great expense. Employees then suffer because the materials that are intended to provide them with information and protections are insufficient, confusing or not available.



Additionally, NAHU urges the Advisory Council to carefully consider how the type of SPD tool proposed could complement the summaries of benefits and coverage (SBC) notices that employers and health insurance issuers are also required to provide to beneficiaries during open enrollment and, based on circumstances, at various other times during the year.

Finally, NAHU urges the Advisory Committee to consider adding the modernization of the electronic-distribution rules related to ERISA disclosure requirements to its agenda. The ERISA electronic-distribution requirements were drafted and finalized over a decade ago. Since then, technology has changed significantly, both for consumers and for employee benefit plans. As the Advisory Council works to streamline and update the content of required ERISA disclosures, NAHU believes it would be an opportune time to remove the barriers that currently exist concerning the electronic distribution of these documents.

An update of the ERISA electronic distribution guidance would benefit all stakeholders. Allowing more efficient use of online distribution resources and employee benefit administration systems will reduce the costs of mailing, distribution and printing that many businesses endure. Enhanced online delivery methods would also be advantageous for beneficiaries by making critical documents easy to find and easy to search when needed, which can be much more meaningful than often discarded printed notices.

One example of how the current rules create unnecessary expense involves the client of one of our members who recently spent \$35,000 preparing and mailing 105-page packages to each of its over 1,300 potentially eligible employees. It had sought guidance that would allow the company to provide directly to all employees a clear statement about the availability of the notices online (with a web address), access to a computer in each of their factories to access and print the notices at no cost or allowing the employee to request a copy of the notices printed at no cost. For this employer, and many others, the current rules reflect a failure to keep up with technology and improved Internet literacy at the expense of employers.

NAHU believes that with that fostering clear, consistent and consolidated rules for electronic distributions would directly complement the Advisory Council's proposal to consolidate all ERISA notices and required distributions into a single annual notice. We also urge you consider making recommendations for more flexibility in the current work-related access to technology requirements, perhaps through the use of a "reasonably accessible" standard whereby any employee could acknowledge through online enrollment that disclosure documents provided online are reasonably available. Furthermore, NAHU encourages the modernization of rules for updating benefit plan documents stored online and the accommodation for apps to store and access notices and plan documents. NAHU suggests an update to the types of technology that constitute a valid address for electronic delivery notifications, such as phone numbers for text messages and social media accounts. Also our membership supports the use of an opt-out standard relative to electronic delivery so that modern processes will be the default and we urge the Advisory Council to consider more flexibility in timing so employers can customize and tailor



to their communication efforts appropriately to different workforces. Finally, if the Advisory Council elects to address modernizing electronic-distribution requirements, NAHU strongly suggests harmonizing both Department of Labor and Department of Treasury requirements so that employers and employees are not subject to different requirements based on the agency requiring the disclosure.

NAHU members would be glad to assist the Advisory Council in any way with the development of more concrete recommendations in all four of these areas. We thank you for the opportunity to provide input on group benefit plan disclosures required by ERISA, and if you have any questions about our comments or need more information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which reads "Janet Stokes Trautwein". The signature is written in a cursive style with a large, looping initial "J".

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