

September 15, 2022

Ali Khawar, J.D.
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite N-5677
Washington, D.C. 20210

Dear Mr. Khawar:

The undersigned organizations represent a diverse set of stakeholders, including organized labor, environmental advocates, large employers, health and welfare plans, and benefits administrators. On behalf of our many constituencies, we write to urge the Department of Labor (the “Department”) to undertake rulemaking to **expand flexibility for health and welfare plans to use electronic media as a default, in a manner similar to the 2020 E-Delivery Safe Harbor (RIN 1210-AB90)**. Rulemaking would allow health and welfare plans expanded opportunities to furnish information to participants and beneficiaries covered under an “employee welfare benefit plan,” as required under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). Specifically, we recommend that the Department extend the e-delivery safe harbor to all health and welfare benefit plan materials noted in the appended document, *Exhibit A*, while maintaining the ability of individual consumers to receive paper communications at their discretion. To the extent necessary, we urge you to coordinate rulemaking with agencies that have joint rulemaking authority, including the Departments of Health and Human Services and Treasury.

The Department indicated in its 2019 proposed safe harbor rule that it would “*study the future application*” of the proposal to health and welfare plans. However, when the safe harbor was finalized in 2020, the Department only extended the e-delivery default option to employee pension plans. Later, Department staff indicated that e-delivery for health and welfare plans would be addressed at a later date. We recognize that the Department has had many important issues to address in the last several years, including responding to the COVID-19 pandemic, and that some health plan disclosures may present unique policy issues. Given the significant financial and environmental costs associated with paper delivery of health and welfare plan communications, we believe the time is ripe to re-engage on this. And just as the safe harbor was afforded to employee pension plans in 2020, **extending the safe harbor to health and welfare plans would achieve significant and valuable policy goals and harmonize disclosures across all employee benefit plans** — while retaining a participant’s ability to receive paper disclosures whenever preferred.

As the Administration continues its work to combat inflation and make efforts to decrease the impact of climate change, this effort would represent a timely and commonsense opportunity to eliminate unnecessary burdens within our health care system while addressing the needs of today’s workers and their families. Below, we seek to summarize the wide-reaching benefits of

this approach to plan participants and their beneficiaries, employer and union plan sponsors, the environment, benefits administrators, and regulators in extending the e-delivery safe harbor to ERISA-covered health and welfare plans.

Consumer Experience

Because of outdated government regulations, some of which were in place before widespread access to the internet, billions of pieces of paper health care communications that could be shared electronically are mailed each year — including “Explanation of Benefits” (EOB) and Summary Plan Description (SPD) documents, which comprise a significant portion of the mandatory paper communications. By orienting nearly all health benefit communications through electronic sources instead, including a centralized portal for a participant’s health benefits, consumers could receive more actionable and timely information. **Instead of tracking benefits across several different physical mailings — each often several dense pages in length — electronic communications would give participants and beneficiaries the option of rapid, reliable, and streamlined access to their plan information — potentially increasing health literacy and engagement in their own health, which has been found to improve health outcomes.ⁱ**

Electronic documents allow participants and beneficiaries to search for key terms and specific sections of the document they may find relevant rather than manually poring through a large document. Additionally, electronic notices have the benefit of being able to provide links to secure web portals established for participants and beneficiaries. This allows participants and beneficiaries to have a more usable and accessible document from a practical perspective, which is essential to achieving equitable health outcomes by improving health literacy.ⁱⁱ

Today, fully 93% of adults in the U.S. use the internet.ⁱⁱⁱ That number is only expected to grow, particularly following enactment of the *Infrastructure Investment and Jobs Act* which allocates \$65 billion to build broadband networks in unserved areas and provide more affordable services.^{iv} Even among older Americans adoption of digital tools and technology continues to grow. Pew Research found that Americans 50 and older are spending more time online than a decade ago. In 2011, 74% of those ages 50 and older were internet users, but by 2021, that number rose to a near universal 96%. Over the same period, the portion of people over age 65 who used the internet rose from less than half (46%) in 2011 to roughly three-in four (75%) in 2021.^v

Employee Benefit Harmonization

Under the leadership of the Department, plan participants and beneficiaries already receive electronic disclosures from their employee pension plans and other employment-related financial services. These disclosures join the myriad other financial communications — including utility bills, home mortgages, credit card bills, and others —

that workers and families are accustomed to receiving electronically. A recent analysis by Fidelity Investments – one of the undersigned organizations – found that, among their plan participants that have personal email addresses on file, 90% provided affirmative consent to e-delivery, 9% did not provide any preference, and only 1% chose to receive print.^{vi}

Allowing plan sponsors and their benefits administrators to default to e-delivery of health and welfare plan communications would help facilitate a harmonized, streamlined benefits experience for participants/beneficiaries and administrators alike. **Excluding health and welfare plans from e-delivery requires benefits administrators to maintain different disclosure systems for what are typically the same participants and beneficiaries. This results in inefficiencies for administrators and confusion among participants and their beneficiaries.**

Privacy and Security for Participants and Beneficiaries

Not only would default e-delivery enhance user engagement and accessibility, but it would also improve information security and privacy for participants and their beneficiaries. While paper communications are vulnerable to theft, incorrect delivery, and require proper disposal, electronic communications are constantly improving with new, protective encryption technologies that safeguard against unauthorized access.^{vii} We understand that there are cyber risks to electronic communications too; however, while anyone can open an envelope in the mail, e-delivery adds a second level of protection through passwords and multi-factor authentication.^{viii} Furthermore, e-delivery improves care continuity as there is no need for a forwarding email address when a participant moves or is displaced by an emergency or disaster. As a result, **extending the e-delivery safe harbor would promote privacy and security for plan participants and beneficiaries.**

Environmental Protection

Extending the e-delivery safe harbor rule to ERISA-covered health and welfare plans is an obvious and achievable step towards protecting the environment. This rulemaking would align with President Biden's significant efforts to reduce the nation's environmental impact through the *Bipartisan Infrastructure Law* and several executive orders aimed at protecting the environment and fighting climate change.^{ix} Meaningfully reducing printing and mailing is a simple, consumer-friendly solution that can combat high rates of paper consumption and associated waste across the U.S. economy and health care system in particular.

Printing and mailing billions of paper copies of benefits disclosures each and every year contributes to a chain reaction of climate impacts — from the trees felled, to the processing of wood into paper, to the distribution of the paper, to the

emissions required to deliver the mail, to the discarded paper that must be recycled or, far too often, ends up in landfills. Each of these steps can contribute to climate change.

Lower Administrative Costs

Extending the e-delivery safe harbor rule to ERISA-covered health and welfare benefit plans would significantly lower administrative costs for benefits administrators and plan sponsors. For example — as noted in a comment letter submitted in response to the 2019 proposed rule for e-delivery for pension plans — a national health plan covering approximately 12 million Americans reports that their annual spending on printing and mailing plan communications amounts to \$20 million, with half spent on EOBs.^x The tens of millions of dollars spent annually for printing and mailing would be better utilized in providing health care benefits to the American workforce or lowering costs to control premium increases.

Harmonizing delivery modalities across all employee benefit plans would save plan sponsors and benefits administrators time and money. **In 2020, the Department projected that the e-delivery safe harbor for pension plans would reduce printing, mailing, and related plan costs by an estimated \$3.2 billion over the next decade.^{xi} Extending this safe harbor to health and welfare plans would likely save significantly more.**

Necessary Consumer Protections

While the signatory organizations strongly support modernization of the Department's rules on electronic communications, we also believe that all consumers should be able to receive vital health care communications in the manner they prefer. **We believe any rulemaking must preserve the option for those who prefer paper disclosures.**

To this end, the Department should require a cost-free and easy way for participants to opt for receiving disclosures by mail. For example, the final 2020 safe harbor for pension benefit plans required that administrators notify participants about the online disclosures, provide information on how to access the disclosures, and inform participants of their rights to request paper or opt out completely. The rule also included additional protections for pension plan beneficiaries, such as accessibility and readability standards for online disclosures and system checks for invalid electronic addresses. **We urge the Department to consider the above protections included in the 2020 pension plan rule as a reference point for ensuring adequate consumer safeguards.**

Additionally, we acknowledge that health and welfare benefits raise different considerations from pension benefits. There may be particular notices, including those that require action within a certain time frame, for which the Department may have elevated concerns about the impact on consumers. We welcome the opportunity to discuss particular disclosures that would fall under this category.

Conclusion

The ongoing COVID-19 pandemic and global supply chain challenges have brought about increasing and urgent pressure on the U.S. economy, all while the entirety of the federal government is seeking to reduce unnecessary carbon emissions and protect the natural environment. This extension of the e-delivery safe harbor to ERISA-covered health and welfare benefit plans represents a commonsense, straightforward regulatory action that would benefit the backbone of the economy — American workers, their unions, and employers — while reducing the climate and environmental impacts of mandatory paper health care communications.

Thank you for considering this request. We also request an opportunity to meet with you and your team to discuss further.

Sincerely,

The ERISA Industry Committee

American’s Health Insurance Plans

Blue Cross Blue Shield Association

Boilermakers National Health and Welfare Fund

Business Group on Health

Culinary Health Fund

Environmental Paper Network

Fidelity

Health Services Coalition

HR Policy Association

Mercer

National Association of Health Underwriters

National Association of Professional Employer Organizations

Partnership for Employer Sponsored Coverage

Self-Insurance Institute of America, Inc.

UNITE HERE HEALTH

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ⁱ McDonald M, Shenkman LJ. Health Literacy and Health Outcomes of Adults in the United States: Implications for Providers. The Internet Journal of Allied Health Sciences and Practice. 2018 Jan 01;16(4), Article 2.

ⁱⁱ Centers for Disease Control and Prevention. Health Literacy.
<https://www.cdc.gov/healthliteracy/learn/index.html>.

ⁱⁱⁱ Pew Research Center. Internet Broadband Fact Sheet. April 2021.
<https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>

^{iv} 117th Congress. Infrastructure Investment and Jobs Act. 23 USC 101. November 15, 2021.
<https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

^v Pew Research Center, op. cit.

^{vi} Fidelity data as of Q1, 2022.

^{vii} Cybersecurity & Infrastructure Security Agency. Encryption Resources.
<https://www.cisa.gov/safecom/encryption>

^{viii} Cybersecurity & Infrastructure Security Agency. Multi-Factor Authentication. <https://www.cisa.gov/mfa>

^{ix} Executive Order on Tackling the Climate Crisis at Home and Abroad. Jan. 27, 2021
<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

^x American's Health Insurance Plans. Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA (RIN 1210-AB90) – AHIP Comments. November 21, 2019.
<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90/00195.pdf>

^{xi} Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA. RIN: 1210-AB90. Employee Benefits Security Administration. Effective date: July 27, 2020.
<https://www.federalregister.gov/d/2020-10951>