

September 3, 2024

Amber Rivers  
Director of Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration, Department of Labor  
200 Constitution Ave NW  
Suite N-5653  
Washington, DC 20210

Dear Ms. Rivers:

Our diverse multistakeholder working group appreciated the opportunity to meet on June 26, 2024, to discuss the urgent need for a default e-delivery safe harbor for health and welfare plan disclosures furnished under the Employee Retirement Income Security Act of 1974 (“ERISA”).

The undersigned organizations, which represent a wide array of constituencies — including labor, environmental advocates, employers, health and welfare plans, and benefits administrators — **continue to strongly support rulemaking to establish an e-delivery safe harbor for health and welfare plan disclosures, similar to the 2020 E-Delivery Safe Harbor (RIN 1210-AB90) for ERISA pension plans.**

We understand that the Department of Labor (DOL) is aligned with the policy and its many notable benefits. We also recognize the potential interaction with forthcoming rulemaking on Advanced Explanation of Benefits (AEOBs). In this letter, we address this potential interaction and provide key reasons why rulemaking should be prioritized this year:

1. EOBs are just one of nearly 50 other disclosures (see Appendix A below) that are currently required to be furnished via paper mail by default and could benefit from a default e-delivery safe harbor.
2. Default e-delivery is essential for health plans and administrators to effectively and efficiently deliver AEOBs to their millions of members ahead of scheduled health care services.
3. There is bipartisan policymaker support for a default e-delivery safe harbor, including from leaders at the White House Domestic Policy Council and members of Congress across key committees and caucuses.

Our multistakeholder working group appreciates your continued attention to this shared policy goal. Default e-delivery is a commonsense rule with clear and immediate benefits to over 150 million Americans covered by ERISA health and welfare plans, as well as the climate and environment we all live in.

**1. EOBs are just one of nearly 50 other disclosures (see Appendix A below) that are currently required to be furnished via paper mail by default and could benefit from a default e-delivery safe harbor.**

We understand that the forthcoming AEOB rule may affect an e-delivery safe harbor for EOBs furnished by ERISA health plans. However, EOBs are just one of nearly 50 of these disclosures (see Appendix A below), which collectively amount to over 10 billion pages of paper mail per year.

Given the many benefits of default e-delivery, rulemaking for a safe harbor should not be delayed. E-delivery enables real-time, streamlined, and actionable communications to plan members. Data from our multistakeholder working group shows that e-delivery supports better member engagement with their health information,<sup>1</sup> which has been shown to improve overall health and well-being in the context of similar digital platforms (i.e., existing patient-provider portals).<sup>2</sup> Simultaneously, our working group has demonstrated the ability for e-delivery to drive members toward digital and mobile tools to compare costs and quality across providers when they are seeking health care.

E-delivery would also save costs by reducing significant administrative burdens for plans and plan sponsors, including employers and unions. During rulemaking for the 2020 pension rule, DOL estimated that default e-delivery would save approximately \$317 million per year, and \$3.2 billion over 10 years. The DOL itself further acknowledged that “*there could be significant cost savings if the safe harbor were extended to cover welfare plan disclosures.*”<sup>3</sup>

The significant environmental impact of default paper disclosures, from sourcing to disposal, is another urgent reason to prioritize rulemaking. Transitioning to e-delivery for the estimated 11.4 billion sheets printed annually to fulfill ERISA health and welfare plan requirements could save, per year: 1,230,000 trees, 967,000,000 pounds of CO<sub>2</sub>, 1,200,000,000 gallons of water, and 66,700,000 pounds of solid waste (equivalent to 15,200,000 people generating waste).<sup>4</sup>

**2. Default e-delivery is fundamentally necessary to enable health plans and administrators to effectively and efficiently deliver AEOBs to their millions of members ahead of scheduled health care services.**

E-delivery is fundamental for health plans and administrators to efficiently and effectively fulfill requirements under the *No Surprises Act*. A default e-delivery safe harbor for ERISA health and

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<sup>1</sup> Record-kept data.

<sup>2</sup> Tapuria, Archana, et al. 2021. “Impacts of patient access to their electronic health record: systematic review.” *Informatics for Health and Social Care*. <https://doi.org/10.1080/17538157.2021.1879810>.

<sup>3</sup> EBSA. 2020. “Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA.” *Federal Register*. <https://www.federalregister.gov/documents/2020/05/27/2020-10951/default-electronic-disclosure-by-employee-pension-benefit-plans-under-erisa>

<sup>4</sup> Environmental Paper Network. 2023. *Modernizing ERISA Health Plan Communications: E-Delivery vs. Paper Mandates*. Environmental impact estimates were made using the Environmental Paper Network Paper Calculator Version 4.0. Calculated using an estimated 10% recycled content. Does not include the impacts from digital alternatives – only paper reduction. <https://environmentalpaper.org/wp-content/uploads/2023/09/Modernizing-Federal-Paper-Mandates-Report.pdf>

welfare plan disclosures is inextricable from forthcoming AEOB requirements, and rulemaking can and should occur concurrently.

Operationally, relying on paper mail to satisfy *No Surprises Act* requirements would be virtually impossible under many circumstances. Paper printing and mailing are not fast enough to meet legislative requirements to provide AEOBs to covered individuals within 1-3 business days of receiving a good faith estimate from a provider. The realities of paper mail—combined with insured members living and moving across the country—impede plan members’ ability to receive paper AEOBs quickly and without delay. Further, members may not check or have access to their mail every day, and Americans are often victims to mail theft and loss.<sup>5</sup> E-delivery is instantaneous, secure, and direct-to-members via ubiquitous 21<sup>st</sup>-century technologies that Americans in ERISA-covered plans use every day. EBSA’s most recent assessment of the 2020 pension rule found that nearly 9 in 10 participants in ERISA-covered pension plans access the internet daily.<sup>6</sup>

Default e-delivery must be prioritized in order to satisfy congressionally mandated requirements within the *No Surprises Act*. If a mechanism for default e-delivery is provided for AEOBs, among the most frequent and timely disclosures for members, there is no reason that a default e-delivery safe harbor should not exist for the many other disclosures furnished by ERISA health and welfare plans (see Appendix A).

If an insured member has their AEOBs delivered electronically, while all other disclosures are instead mailed to them via paper, it will cause confusion and fail to capture the many benefits of harmonizing disclosures across the same delivery modality (as discussed above). In the 2020 pension rule, DOL rejected this “*a la carte*” approach, acknowledging that defaulting only certain disclosures to e-delivery imposes burdensome administrative complexity on employers and plan administrators.<sup>7</sup>

We do not believe there is any reason to delay issuing a default e-delivery safe harbor for ERISA health and welfare plans because of the forthcoming AEOB rulemaking. In reality, the

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<sup>5</sup> United States Postal Service. 2024. USPS And USPIS Continue Nationwide Campaign to Combat Postal Crime and Protect Postal Employees. <https://about.usps.com/newsroom/national-releases/2024/0312-usps-uspis-continue-nationwide-campaign-to-combat-postal-crime-and-protect-employees.htm#:~:text=Arrests%20Associated%20with%20Letter%20Carrier%20Robberies%20Up%2073%25&text=Since%20May%202023%2C%20the%20Postal.robberies%20and%20mail%20theft%20nationwide>. “For the 2024 Fiscal Year so far, the Postal Inspection Service has made 73% more arrests for letter carrier robberies over the same time period in the prior fiscal year. This increase is the direct result of the efforts made by the Postal Inspection Service and federal and local law enforcement partners to aggressively pursue those who rob our letter carriers and steal mail. Since May 2023, the Postal Inspection Service has made over 1,200 arrests for letter carrier robberies and mail theft nationwide.”

<sup>6</sup> EBSA. 2022. “Report on Default Electronic Disclosure by Employee Pension Benefit Plans Under Employee Retirement Income Security Act.” Bloomberg Law. <https://aboutblaw.com/1xd>.

<sup>7</sup> EBSA. 2020. “Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA.” *Federal Register*. <https://www.federalregister.gov/documents/2019/10/23/2019-22901/default-electronic-disclosure-by-employee-pension-benefit-plans-under-erisa> “Many commenters objected to requiring plan administrators to offer a document-by-document opt-out right. Current recordkeeping systems, they explained, generally apply an “all or nothing” approach to paper versus electronic delivery. An à la carte system, by contrast, would require difficult and costly system modifications to keep track of paper preferences on a document-by-document basis for each covered individual. The Department is persuaded that the critical protection for covered individuals is the right to globally opt out of electronic delivery. Therefore, the final rule strikes the phrase “some or all” from paragraph (f)(2), retaining (and making clearer by adding the term “globally”) only the global opt-out as a requirement.”

AEOB rule makes it more important, timely, and practical to issue a default e-delivery rule safe harbor for all ERISA health and welfare plan disclosures.

**3. There is bipartisan policymaker support for a default e-delivery safe harbor, including from leaders at the White House Domestic Policy Council and among members of Congress across key committees and caucuses.**

Over the last two years, our multistakeholder working group has engaged with Democrats and Republicans to discuss support for a default e-delivery safe harbor for ERISA health and welfare plans, and we have heard strong bipartisan support for the policy from these key policymakers.

In recent conversations, staff at the White House Domestic Policy Council expressed their support for an e-delivery safe harbor and encouraged continued engagement with the DOL to initiate rulemaking.

In addition, we have engaged with Democratic and Republican Representatives on the House Committee on Education and Workforce as well as the Congressional Digital Health Caucus. Members across the political spectrum have expressed support for an e-delivery safe harbor and its benefits, particularly given the built-in protections in place for those without access to digital delivery modalities and/or those who prefer to continue receiving paper disclosures.

We appreciate your continued engagement with our multistakeholder working group for default e-delivery for ERISA health and welfare plans. We look forward to hearing any next steps.

Sincerely,

**The ERISA Industry Committee**

**NABIP**

**AHIP**

**National Alliance of Healthcare  
Purchaser Coalitions**

**American Council of Life Insurers**

**National Association of Professional  
Employer Organizations**

**Business Group on Health**

**Environmental Paper Network**

**Partnership for Employer-Sponsored  
Coverage**

**Fidelity Investments**

**Professional Firefighters of Nevada**

**HR Policy Association**

**Self-Insurance Institute of America, Inc.**

**Mercer**

## APPENDIX A – Health and welfare disclosures required under ERISA

<b>ERISA Notices and Disclosures</b>
1. Summary Plan Description (SPD)
2. Summary of Material Modifications (SMMs)
3. SMM for Material Reduction in Group Health Plan Services or Benefits
4. Summary Annual Report (SAR)
5. Documents in Response to Participant and Beneficiary Requests
6. Notification of Benefit Determination (Claims Notices or “Explanation of Benefits”)
<b>COBRA Notices</b>
7. COBRA Initial Notice
8. COBRA Election Notice
9. COBRA Qualifying Event Notice
10. Notice of Termination of COBRA Coverage
11. Notice of Unavailability of COBRA Coverage
<b>HIPAA Notices and Disclosures</b>
13. HIPAA Notice of Privacy Practices
14. Notice of Availability of HIPAA Privacy Practices Notice
15. HIPAA Breach Notification Letter
16. HIPAA Special Enrollment Rights
<b>Other Group Health Plan Notices and Disclosures</b>
17. Medicare Part D Notices of Creditable (or Non-Creditable) Coverage
18. MHPAEA (Mental Health Parity): Criteria for Medical Necessity Determinations and Reasons for Denials of Mental Health Benefits
19. MHPAEA-Related Disclosures Under the CAA-21
20. Surprise Medical Billing Notice (Under the No Surprises Act (NSA), which is part of the CAA-21)
20. Other Disclosures Under the CAA-21
21. Michelle's Law
22. Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) Disclosure
23. Qualified Medical Child Support Orders (QMCSOs)
24. Women's Health and Cancer Rights Act (WHCRA) Notice
25. Children's Health Insurance Program Reauthorization Act (CHIPRA) Employer Notice
26. Coverage and Cost Transparency Disclosures Under the ACA and Regulations (Nov. 2020) (PHSA § 2715A)
<b>Affordable Care Act Notices and Disclosures</b>
27. ACA Health Exchange Notices
28. ACA Information Reporting (Statements of Coverage for Individuals) (IRS Forms 1095-C)
29. Form W-2 Reporting: Cost of Employer-Sponsored Health Coverage
30. Grandfathered Health Plan Disclosure
31. Notice of Availability of Separate Payments for Contraceptive Services
32. Notice of Coverage Rescission
33. Notice Regarding Coverage for Obstetric or Gynecological Care
34. Notice Regarding Designation of a Primary Care Provider
35. Section 1557 Notice of Nondiscrimination
36. Summary of Benefits and Coverage (SBC) and Uniform Glossary
37. Summary of Benefits and Coverage: Notice of Modification

<b>Other Notice and Disclosure Requirements</b>
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38. Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) Written Notice
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39. Individual Coverage Health Reimbursement Arrangement (ICHRA) Written Notice
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40. Notice of Research Exception Under the Genetic Information and Nondiscrimination Act of 2008 (GINA)
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41. Notice of Rights, Benefits, and Obligations Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
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42. Wellness Program Disclosures
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43. MHPAEA Claims Denial Notice
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44. MHPAEA Increased Cost Exemption
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45. Internal Claims and Appeals and External Review Notices
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46. External Review Process Disclosure
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47. Employer Notice to Employees of Coverage Options
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48. National Medical Support (NMS) Notice
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