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Legal & Public Affairs



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Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attn: E-Disclosure RFI

**RE: RIN 1210-AB50 Comments in Response to Request for Information
Regarding Electronic Disclosure by Employee Benefit Plans**

Dear Sir/Madam:

CIGNA is pleased to respond to the request for comments by the Department of Labor regarding potential changes to the safe harbor requirements of the ERISA Electronic Disclosure by Employee Benefit Plans rules. CIGNA is very interested in expanding the opportunity to provide plan materials to our clients and customers electronically.

CIGNA is a global, health service organization dedicated to helping people around the world improve their health, well-being and sense of security. We provide an integrated suite of insured and self-insured medical, dental, behavioral health, pharmacy and vision care benefits, as well as group life, accident and disability insurance to approximately 46 million people throughout the United States and around the world. Given the world-wide trend toward electronic communication, CIGNA welcomes the opportunity to provide the following comments regarding the current ERISA safe harbor for providing plan materials electronically.

Access & Usage Questions

1. *What percentage of people in this country has access to the Internet at work or home? Of this percentage, what percentage has access at work versus at home? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)?*

Response: While we do not have any direct data on the percentage of U.S. citizens with access to the Internet, there is research available through the U.S. Census Bureau and at www.pewinternet.org which show that a large percentage of U.S. homes have internet access and the number is growing each year.

2. *What percentage of participants and beneficiaries covered by an ERISA plan has access to the Internet at work or home? Of this percentage, what percentage has access at work, at home, or both? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)? What percentage of participants and beneficiaries uses the Internet to access private information such as personal bank accounts?*

Response: While we do not have any direct data on the percentage of U.S. citizens with access to the Internet, there is research available through the U.S. Census Bureau and at www.pewinternet.org which show that a large percentage of U.S. homes have internet access and the number is growing each year.

3. *What percentage of pension benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of plans (e.g., single-employer plans versus multiemployer plans, defined benefit pension plans versus defined contribution pension plans, etc.), types of participants and beneficiaries (e.g., active, retired, deferred vested participants) and types of disclosures (e.g., all required title I disclosures versus select disclosures).*

Response: No response. CIGNA does not market pension benefit plans.

4. *What percentage of employee welfare benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of welfare plans (e.g., health, disability, etc.), types of participants and beneficiaries (e.g., active employees, retirees, COBRA Qualified Beneficiaries, etc.) and types of disclosures (e.g., all required title I disclosures versus select disclosures).*

Response: Although we do not have any direct statistics on the number of plans that provide some or all disclosures available electronically, we make all of our materials available in electronic format to all of our clients. Additionally, our secure website provides important and relevant information to members regarding their plan and claim information.

5. *What are the most common methods of furnishing information electronically (e.g., email with attachments, continuous access Web site, etc.)?*

Response: Our most common and preferred method is to utilize our continuous access website and to post all plan related materials on this website. The website is a secure, password protected site that provides information specific to the

participant and the participant's plan. We do not use email with attachments due to privacy issues. We do, however, use email for notification that a new document has been posted to the website.

6. *What are the most significant impediments to increasing the use of electronic media (e.g., regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, etc.)? What steps can be taken by employers, and others, to overcome these impediments?*

Response: The Federal and State regulatory requirements are, by far, the most significant impediment to using electronic media. Many of the requirements are very cumbersome and it is difficult to comply. The Federal requirement that use of electronic media be an opt-in for participants who do not have access as an integral part of their work duties is particularly difficult. Carriers have no means of knowing or tracking this information and obtaining and maintaining the information through the employer is difficult and inconsistent. When a participant is required to opt-in to electronic materials, it is difficult to track their preferences to ensure accuracy. Currently, carriers need to track undeliverable email notifications to show that an attempt was made to notify the participant that a document was posted to the website, which is very cumbersome.

However, the most significant impediment is the differences in requirements from jurisdiction to jurisdiction. For example, an insured plan with participants in multiple states would be required to comply with the requirements of each jurisdiction in addition to the Federal requirements. Tracking the requirements (and changes to those requirements) and being able to apply them only to participants impacted is difficult and costly, both in time and technological changes. This requires significant technology development on our part, which we are willing to undertake to provide electronic access to our participants if requirements were more consistent and less complicated.

Our clients and our participants are very interested in receiving materials electronically and eliminating or reducing the use of paper. Many people would like to turn off paper documents, but they "just haven't gotten around to it." If electronic was the standard and participants had to opt in to receiving paper, more people who would like to receive documents electronically would do so since there is no effort required on their part.

7. *Is there evidence to suggest that any increase in participant and beneficiary access to, and usage of, the Internet and similar electronic media in general equates to an increased desire or willingness on the part of those participants and beneficiaries to receive employee benefit plan information electronically? If so, what is it?*

Response: No comment.

8. *Are there any new or evolving technologies that might impact electronic disclosure in the foreseeable future?*

Response: At this time, the use of mobile applications (“apps”) for devices such as smart phones and tablet computers appears to be the largest growing technology. Such apps could possibly be available for accessing provider directories, claim data, and other plan materials. However, any regulatory guidance should be broad enough to allow for future technology.

General Questions

9. *Should the Department's current electronic disclosure safe harbor be revised? If so, why? If not, why not?*

Response: Yes. Revisions are needed to bring the requirements up to date with current technology and participant needs. Our participants share our desire to “go green” and protect the environment by eliminating or reducing paper. However, they do not want to be inundated with electronic messages either. The current requirements are cumbersome for both the carrier and the participant and are costly in regard to man hours and technology changes.

10. *If the safe harbor should be revised, how should it be revised? Please be specific.*

Response: The safe harbor should allow the plan sponsor to determine whether electronic access to plan materials will be provided to its plan participants. In addition, participants should have the option to opt-out of receiving electronic materials if they so choose. Given the large increase in the number of homes with Internet and email access and the desire for privacy, the rules should require reasonable access instead of requiring that access be an integral part of the employee's work duties. Employees may be reluctant to access information at work, fearing their employer or fellow employees will gain access to or view their personal health information. If a participant is informed that plan materials will be provided electronically unless the person opts out, reasonable access should be presumed if the person does not opt-out. During the enrollment process, participants would be required to provide and confirm their email addresses to allow for electronic notification of new plan materials. However, even if a participant does not opt out of electronic materials, paper copies should be available upon request and without charge to the participant. While we do not believe that the participant should be charged for paper copies, the employer/plan

sponsor would be expected to absorb the expense. If the enrollment process is electronic, notice that plan materials will be provided electronically should be included in the enrollment materials, which could be by email or by paper at the plan sponsor's option. The Federal requirements should preempt all state requirements regarding the delivery of any Federally-required documents (e.g., SPD, EOB, HIPAA notices, COBRA notices, PPACA notices, etc.). There is precedent in federal CAN SPAM act for federal requirements to supersede state requirements. The CAN SPAM act currently supersedes all state anti-spam laws except any state provision that prohibits false or misleading statements in emails.

11. *Should a revised safe harbor have different rules or conditions for different types of employee benefit plans (e.g., pension versus welfare plans)? If so, why and what differences?*

Response: Since many employees participate in both employee welfare benefit plans and pension plans, consistency in the method and options for delivery is important for participants. Imposing different requirements to opt-in or opt-out of electronic materials would be confusing and frustrating to participants who view both plans as being provided by the employer and do not understand when requirements are inconsistent.

12. *Should a revised safe harbor have different rules or conditions for different types of disclosures (e.g., annual funding notice, quarterly benefit statement, COBRA election notice, etc.)? If so, why and what differences?*

Response: The requirement to opt-out of electronic delivery of plan materials should be made at enrollment and that option should apply to all notices and disclosure provided by the plan.

13. *Should a revised safe harbor have different rules or conditions for different recipients entitled to disclosures (active employees, retirees, COBRA Qualified Beneficiaries, etc.)? If yes, why, and how should the rules or conditions differ?*

Response: As long as all types of participants are provided access to the secure website and/or are able to provide a legitimate email address, the requirement to opt-out of electronic delivery of plan materials should be made at enrollment and that option should apply equally to active employees, retirees and COBRA beneficiaries.

14. *To what extent should the Department encourage or require pension and welfare benefit plans to furnish some or all disclosures required under title I of ERISA through a continuous access Web site(s)? In responding to this question, please address whether*

and how frequently participants and beneficiaries should be notified of their ability to access benefit information at the Web site(s) and the most appropriate means to provide such notice. For example, should participants and beneficiaries receive a monthly notification of their ability to access benefit information or should they receive a notification only when an ERISA-required disclosure is added to the Web site? How should such notifications be furnished (e.g., paper, email, etc.)? Please also address what steps would be needed to ensure that participants and beneficiaries understand how to request and receive paper copies of the disclosures provided on the Web site(s).

Response: Notice should be required only when new federally-required material has been posted to the website or otherwise made available electronically. However, notice should not be required for materials that are continuously updated, such as provider directories which can be updated daily to reflect the addition and deletion of providers and updates to addresses and/or phone numbers. However, notice should be provided when a participant's specific PCP or specialist leaves the network. Notice that plan materials will be provided electronically should be included in pre-enrollment materials. Outside of enrollment, notice can be provided by email or by conspicuous posting on the secure website (e.g., a dialogue box pops up the first time a participant signs on after new material is posted). The participant's preference for electronic documents should apply to all plan materials and related notices and should eliminate the requirement to provide any additional confirmative consent for any other materials. Carriers/plans should provide an email address, website and/or phone number to request paper copies of plan materials. Participants should be able to opt-out of electronic documents through the annual enrollment process, via the website or by calling. Given that technology is ever-changing, the Department should encourage, but not require, use of a continuous access website, while leaving the door open to other technology options (e.g., smart phone apps, etc.). With the use of Adobe Acrobat being the standard, notice of specific hardware/software requirements should not be required. Websites can make Adobe Acrobat available via a link from the website.

15. *Who, as between plan sponsors and participants, should decide whether disclosures are furnished electronically? For example, should participants have to opt into or out of electronic disclosures? See Question 26.*

Response: The plan sponsor should decide if electronic materials will be provided generally. However, all participants should have the ability to opt-out and receive paper materials.

16. *Should a revised safe harbor contain conditions to ensure that individuals with disabilities are able to access disclosures made through electronic media, such as via*

continuous access Web sites? If so, please describe the conditions that would be needed. Also, please identify whether such conditions would impose any undue burdens on employee benefit plans, including the costs associated with meeting any such conditions. What burden and difficulty would be placed on employees with disabilities if the Web sites and/or other electronic communication were not accessible?

Response: While it is important to accommodate disabilities, these accommodations should not create such an administrative burden on plans/carriers that the process is brought to a halt.

Technical Questions

17. *If a plan furnishes disclosures through electronic media, under what circumstances should participants and beneficiaries have a right to opt out and receive only paper disclosures?*

Response: Participants should always have the option to opt-out of receiving plan materials electronically. However, opting out of electronic materials should not preclude the carrier/plan from posting the materials electronically to the website in addition to providing paper copies.

18. *The Department's current regulation has provisions pertaining to hardware and software requirements for accessing and retaining electronically furnished information. In light of changes in technology, are these provisions adequate to ensure that participants and beneficiaries, especially former employees with rights to benefits under the plan, have compatible hardware and software for receiving the documents distributed to their non-work email accounts?*

Response: While we do not have any specific data on this issue, we would stress that any requirements should be broad enough to encompass any future new technology without the need to update regulations.

19. *Some have indicated that the affirmative consent requirement in the Department's current electronic disclosure safe harbor is an impediment to plans that otherwise would elect to use electronic media. How specifically is this requirement an impediment? Should this requirement be eliminated? Is the affirmative consent requirement a substantial burden on electronic commerce? If yes, how? Would eliminating the requirement increase a material risk of harm to participants and beneficiaries? If yes, how? See section 104(d)(1) of E-SIGN.*

Response: The affirmative consent requirement should be eliminated. This is very cumbersome for plans to track and coordinate between the plan and the

carrier. This should be changed to an opt-out. Carriers cannot distinguish between participants who have access as an integral part of work and those who must affirmatively consent. This prevents carriers from having a uniform way to give all participants the ability to make a preference selection. All participants should be treated a like and allowed to opt out, but should not be required to take extra steps to opt-in to electronic materials.

20. *In general, the E-SIGN Act permits electronic disclosure of health plan materials but does not apply to cancellation or termination of health insurance or benefits electronically. Are there special considerations the Department should take into account for group health plan disclosures (including termination of coverage and privacy issues)?*

Response: No comment

21. *Many group health plan disclosures are time-sensitive (e.g., COBRA election notice, HIPAA certificate of creditable coverage, special enrollment notice for dependents previously denied coverage under the ACA, denials in the case of urgent care claims and appeals). Are there special considerations the Department should take into account to ensure actual receipt of time-sensitive group health plan disclosures?*

Response: While certain notices may require special consideration, such as COBRA notices and denials of claims and appeals, it should be the sender's determination if the type of notice warrants confirmation of email receipt and how that confirmation is made. Complicated requirements could be difficult and costly for plans. For example, requiring that an electronic receipt showing that an email has been received would be costly in that a copy of that receipt must be maintained for a certain length of time and vendors typically charge for each email retained.

22. *Do spam filters and similar measures used by non-workplace (personal) email accounts, pose particular problems that should be taken into consideration?*

Response: Not all email providers will provide a return receipt or notice of undeliverable message to the sender of an email. Carriers/plans should only be required to make one attempt to provide required email notices.

23. *What is the current practice for confirming that a participant received a time sensitive notice that requires a participant response?*

Response: COBRA is the most important Welfare plan notice that requires a specific participant response and proof that the plan provided the notice timely.

The sender should determine whether the importance of the COBRA notice warrants the notice being sent by paper even if the participant has not opted-out of receiving electronic notices. Alternatively, an email or other electronic notification could provide specific instructions and conspicuous warnings that participant action is required, or the electronic notice could trigger an electronic receipt confirming delivery.

24. *What are current practices for ensuring that the email address on file for the participant is the most current email address? For example, what are the current practices for obtaining and updating email addresses of participants who lose their work e-mail address upon cessation of employment or transfer to a job position that does not provide access to an employer provided computer?*

Response: Federal and state requirements currently result in several steps prior to turning paper documents off. The participant must provide a legitimate email address, which the carrier must verify, in order for notice to be sent that a new document has been posted. A validation email is sent to the participant. The participant must then follow the procedures in the email to click on a link which brings them back to the website (where they originally opted in to electronic), which notifies the participant that they have completed the validation process. The link has information embedded in it so that the carrier can verify who has clicked on the link and the information matches the participant.

Every time a new Explanation of Benefits is posted to the website, an email notification is sent to the participant. We try to send the notice 3 times. If 3 undeliverable emails are received, we revert the participant back to paper. Then the participant would have to go back to the beginning to opt back in to electronic documents. However, the undeliverable message could simply be a result of a server being down and not necessarily that the email is no longer valid.

Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

25. *What costs and benefits are associated with expanding electronic distribution of required plan disclosures? Do costs and benefits vary across different types of participants, sponsors, plans, or disclosures? Are the printing costs being transferred from plans to plan participants and beneficiaries when information is furnished electronically?*

Response: Development costs can be significant as there can be multiple system platforms that need to be integrated into the paper preference and execution

system. Costs to store and manage the inventory of electronic documents and the volume of email notifications are significant as well. Email vendors charge per email. We do not charge participants for providing required documents either electronically or in paper format, but we do charge the plan sponsor for paper.

26. *If electronic disclosure were the default method for distributing required plan disclosures, and assuming "opting out" were an option, what percentage of participants would likely "opt-out" of electronic disclosure in order to receive paper disclosures? Should participants be informed of increased plan costs, if any, attendant to furnishing paper disclosures at the time they are afforded the option to opt out or into an electronic disclosure regime?*

Response: This will depend on other aspects of the overall customer experience related to going paperless. For example, if the default is set to online only, but we are still required to send email notifications which require us to validate email address first before actually turning paper off, this likely would result in fewer people opting out. For non-ERISA required documents, the default is online only with paper being an option the participant must opt in to. Very early results show that only 8% of participants have requested to receive paper documents. Informing participants of the increased cost of furnishing paper documents would be helpful in leading people to elect (or not opt out of) electronic documents.

27. *Do participants prefer receiving certain plan documents on paper rather than electronically (e.g., summary plan descriptions versus quarterly benefit statements), and what reasons are given for such preference? Would this preference change if participants were aware of the additional cost associated with paper disclosure?*

Response: One of the more common reasons people provide for wanting a paper copy is for filing purposes. They feel comfortable having a paper copy for their files, just in case. Participants may be more willing to accept electronic documents if the website allows the participant to print all documents and provides a reasonable history of documents on the website (e.g., past 2 years) and allows access to a longer history (e.g., past 10 years) through a simple call to customer service. Currently technology would allow participants to download and/or print their electronic documents from the website directly to their own computers at any time.

28. *What impact would expanding electronic disclosure have on small plans? Are there unique costs or benefits for small plans? What special considerations, if any, are required for small plans?*

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29. *Is it more efficient to send an email with the disclosure attached (e.g., as a PDF file) versus a link to a Web site? Which means of furnishing is more secure? Which means of furnishing would increase the likelihood that a worker will receive, read, retain and act upon the disclosure?*

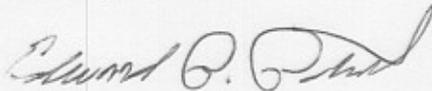
Response: Posting disclosures on a website is more secure for privacy reasons since the participant must sign into the website to access the information. Email attachments can overload an email account. Additionally, with the increasing use of mobile devices such as smart phones, the font size of a PDF file may make reading the information more difficult.

30. *Employee benefit plans often are subject to more than one applicable disclosure law... employee benefit plans benefit from a single electronic disclosure standard?*

Response: A single electronic disclosure standard would provide more consistency for carriers, plans, and participants. It would be less confusing for participants when changing from one plan to another (e.g., insured complying with state mandates to self-funded complying with only federal mandates). Varying compliance by jurisdiction is extremely difficult when plans very often overlap multiple jurisdictions and requirements differ based on funding (insured vs. self-funded). This also increases plan costs.

We appreciate your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,



Edward P. Potanka