

# UNIFI

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Ameritas Life, Acacia Life, Union Central Life  
and affiliated companies

**Steve Christophersen**  
**Director and Assistant General Counsel**  
**Ameritas Life Insurance Corp.**  
5900 O Street / Lincoln, NE / 68510  
P.O. Box 81889 / Lincoln, NE / 68501-1889

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

Via Electronic Mail Only

Re: Request for Information re: Electronic Disclosure by Employee Benefit Plans

To Whom It May Concern:

Ameritas Life Insurance Corp. ("Ameritas") appreciates this opportunity to provide responses to certain of the questions included in the "Request for Information Regarding Electronic Disclosure by Employee Benefit Plans" ("RFI") published in the Federal Register on Thursday, April 7, 2011. Moreover, Ameritas welcomes the opportunity to work with the Department of Labor ("Department") to successfully modernize and update the electronic disclosure standards previously promulgated by the Department to better reflect current and developing technology and best practices while continuing to respect the rights and interests of participants and beneficiaries.

Ameritas, a UNIFI company, provides dental and eye care insurance products and related administrative service offerings (in addition to other life insurance, retirement plan and financial services products) on a nation-wide basis in support of more than 70,000 employer groups, insuring or administering dental and eye care benefits for more than 4.8 million people. In New York, products are offered through First Ameritas Life Insurance Corp. of New York. Ameritas' below comments are in response to those RFI questions where Ameritas felt its experience in the dental and eye care benefits industry would provide a particularly beneficial insight.

## COMMENTS

### *Access & Usage Questions*

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

**Response:** The most common method in the welfare benefit arena is a secure, continuous access website. When new documents or communications are added to the website, a notice is sent to the email address designated by the plan participant advising them of the delivery and requesting that they access the password-controlled site, via a link included as part of the notice email, and review the information.

**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 most significant impediments to increasing use of electronic media are the various regulatory restrictions imposed upon plan sponsors and covered members in order to use such media. One example of such an impediment is the Department's safe harbor affirmative opt-in requirement for the category of participants and beneficiaries whose duties don't include access to the plan sponsor's information systems to perform their job. Rather than facilitate or encourage the increased use of electronic media, the additional steps required by this opt-in process have the effect or tendency to cause those persons who would otherwise prefer electronic disclosures to delay opting-in until a "more convenient" future time. This delay often results in the person entering a loop of inaction by continually putting off the opt-in election favor of other more immediate or pressing perceived needs or demands. When viewed from outside of this context, this type of inaction could give one the impression that participants prefer to receive these disclosures in a paper form when in many instances, in fact, the very opposite is true.

One possible solution would be to give the plan sponsor the ability to select electronic media as the default delivery mechanism to all participants and beneficiaries for required notices and other plan disclosures and communications. As the Department recognized in the RFI, the significant majority of households in the United States have some type of Internet access so making electronic delivery the default mechanism should not prove unduly burdensome for either participants or beneficiaries. Moreover, under this option, participants could be given the ability, at no charge, to opt-out to a paper-based delivery process in order to address the needs of those participants who may prefer paper delivery or who may not have reasonable Internet access. This change to the default delivery mechanism will have the effect of bringing the electronic delivery rules more in line with the current state of information delivery generally while affording participants and beneficiaries the increased ability to access a wide range of benefit information on an on-demand, secure and searchable basis.

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

**Response:** While Ameritas does not have specific survey information on the degree of penetration of smartphones, tablets and other similar mobile communication and computing devices, it does seem fairly evident that these technologies along with

increasing use of social media and other developing remote access technologies such as cloud computing all point toward businesses and consumers having an ever-increasing ability to access information of all kinds on a secure, on-demand and real-time basis. The electronic disclosure rules should be revised in a manner that contemplates these types of mobile access technologies while being flexible enough to both permit and encourage plan sponsor and member adoption and use in the welfare benefits arena of yet-to-be-developed communication technologies.

### *General Questions*

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

**Response:** Yes, the Department's safe harbor provision should be revised. Current technology allows for a more timely, effective and efficient means of communication between plan sponsors (to include any third party insurers and administrators) and plan participants. Moving from a paper-intensive to an electronic environment will reduce employee benefit plan costs. Additionally, such a change could have the effect of further empowering plan participants by providing on-demand access not only to plan designs and the benefit information currently required by regulations but also to other real-time information such as up-to-the-minute claim status, remaining benefit levels and other information not currently available to plan participants through a paper-based communication model. Finally, modifying the safe harbor in a manner that would encourage electronic delivery has the added benefit of being environmentally friendly and will allow both plan sponsors and participants to more meaningfully contribute to the national 'go green' effort.

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

**Response:** For the reasons set forth above in Response 6, the Department's safe harbor should be revised to make electronic delivery the default delivery mechanism while preserving the right of individual participants to opt-out to a paper format.

**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:** No. Consistency in the rules and conditions across the various types of disclosures will allow plan sponsors (and their third party insurers and administrators) to communicate with plan participants in an orderly and meaningful manner.

**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:** No. Different rules or conditions for different recipients will impose an unnecessary burden and cost upon plan sponsors, both in terms of tracking these recipients to determine their then-current recipient category as well as developing different processes and procedures to address the rules applicable to the various categories of recipients. Moreover, establishing different rules and conditions that are dependent on recipient category could prove confusing to these same recipients as they move in and out of the various categories.

**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:** The Department should strongly encourage the use of secure, continuous access Web sites. Any time new or updated plan or benefit information or a required notice is available on the continuous access Web site for recipient's review, notification should be provided by electronic mail, text message or other secure electronic communication mode informing the recipient of the availability of such information. Notice concerning the manner by which paper copies can be requested should be included on the continuous access Web site.

**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 whether disclosures are furnished electronically, with the participants having the ability to opt out of electronic disclosures. In the case where a plan sponsor opts out of electronic disclosures, the participants should have the ability to opt in.

#### *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 be allowed to opt out to paper at any time and for whatever reason.

**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:** Ameritas agrees the affirmative consent requirement is an impediment to the broader adoption of electronic delivery and should be eliminated. This requirement imposes additional burdens on those participants who would otherwise prefer to receive documents electronically. While not substantial, these additional burdens have the tendency of making the process of opting-in sufficiently inconvenient to cause the participant to delay such action until a more convenient future time. The further removed in time the participant gets from the initial presentation of the opt-in option, the less likely the person would be to exercise this option. For many participants, whether to opt-in to electronic distribution in effect becomes a decision by inaction.

**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:** The Department should ensure that participants are afforded the right to select (and at their convenience change) their preferred mode of electronic communication regarding time-sensitive notices and disclosures delivered by the plan sponsor to participant's continuous access Web site.

**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:** Current practices include capturing the email addresses preferred by plan participants at the point in time the participants sign up for access to a secure, continuous access Web site. Once signed up, the participants are provided the opportunity to modify the preferred email address at any time. Other practices include periodically prompting the participants at the point of signing in to the Web site to review and if necessary, update their preferred email address. Lastly, it is common for plan sponsors (and their third party insurers and plan administrators) who receive a 'bound back' communication

indicating an email is not longer valid to drop the communication to paper and mail the communication to the last-known address.

*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:** As with any change in technological process, there will likely be some up-front costs associated with the development and implementation of a particular protocol. However, once implemented and operational (and assuming a substantial adoption and use of the new process), the cost associated with the on-going operation of electronic distribution would be far less than a predominantly paper process the cost of which includes paper stock, printing and mailing. Some level of printing cost could be passed to those participants and beneficiaries who choose to locally print their electronic distributions for record retention or other purposes. However, electronic distributions allow participants to avoid such costs by offering more convenient and flexible retention options such as continuous access Web site storage, local electronic storage and possibly cloud-based storage.

**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:** A link to a Web site is in the aggregate the more efficient, effective and secure approach to the delivery of a required disclosure. The Web site link approach allows the participant to securely and easily access a wide variety of benefit plan information along with the disclosure in question. This type of access may, in some scenarios, give the participant an ability to put the particular disclosure in a fuller context. Examples of disclosures that particularly benefit from Web site distribution include welfare plan claim determinations. If sent as a .pdf attached to an encrypted email, the participant would understand only the adjudication of the particular claim. However, if delivered by a Web site, the participant could understand not only the current claim considered by the plan sponsor but also year-to-date activity and remaining benefit balances. This additional information makes the participant a more informed consumer of the welfare benefit plan. Also, the continuous access Web site will allow the participant maintain all of his or her particular plan benefit information in a single, centralized location, rather than requiring the individual to save the documentation locally on machines or storage devices that could sometimes fail or be periodically upgraded.

**30. Employee benefit plans often are subject to more than one applicable disclosure law (e.g., ERISA, Internal Revenue Code) and regulatory agency. To what extent would such employee benefit plans benefit from a single electronic disclosure standard?**

**Response:** A single electronic disclosure standard applicable across all disclosure laws would greatly benefit both plan sponsors and participants. Plans of all kinds would become easier and more cost effective for sponsors to administer and participants would have the benefit of a single process or protocol for receiving electronic distributions, thereby reducing the potential confusion stemming from the existence of multiple or varied electronic delivery standards.

**Conclusion**

In closing, Ameritas thanks the Department for its consideration of our comments. As the Department appropriately noted in the RFI, there have been and continue to be substantial changes in communication and information technology, both in the workplace and in the home. We believe it would be very helpful to both plan sponsors and participants for the Department to modify its electronic delivery standards in a manner that would allow these parties to take full advantage of such advancements in technology. Particularly for plan participants, these new and developing technologies will allow them to have on-demand and real-time access to as much, or as little, benefit plan information as they feel appropriate to meet their respective needs. Ameritas commends the Department for undergoing this initiative and again would welcome the opportunity to continue to discussions involving the successful modernization the Department's electronic disclosure standards.

Sincerely



Steven J. Christophersen  
Director and Assistant General Counsel