



November 21, 2019

Joe Canary, Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

**RE: Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA
(RIN 1210-AB90) – AHIP Comments**

Submitted electronically via *regulations.gov*

Dear Mr. Canary:

On behalf of America's Health Insurance Plans (AHIP)¹, we appreciate the opportunity to offer comments on the Proposed Rule and Request for Information published in the Federal Register (84 Fed. Reg. 56894) on October 23, 2019, which would create a new safe harbor for employee benefit plans to use electronic media to furnish documents to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA).

In the above-captioned rule, the Department exercises authority to “allow online retirement plan disclosures to reduce printing and mail expenses for job creators and make disclosures more readily accessible and useful for America’s workers.”² The proposed rule does not apply to employee welfare benefit plans given that Executive Order 13847 directs action on retirement security. While we understand any rules governing employee welfare benefit plans would require consultation with the Departments of the Treasury Health and Human Services, similar regulatory action on employee welfare benefit plans would achieve the same goals and we strongly encourage future rulemaking on this issue.

¹ AHIP is the national association whose members provide coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

² <https://www.dol.gov/newsroom/releases/ebsa/ebsa20191022>

An additional electronic disclosure safe harbor for employee welfare benefit plans achieves the Department's goals and serves the public interest.

We encourage the Department to work with Treasury and HHS to commence rulemaking extending electronic disclosure safe harbor to employee welfare benefit plans, including health plans. AHIP supports administrative flexibility in how group health plans established as employee welfare benefit plans may provide notices required under ERISA. This flexibility, which can be provided by a safe harbor similar to what the Department proposes for retirement plans, make it more likely that recipients review electronic disclosures, would provide meaningful access to notices, while reducing administrative costs. In short, such a safe harbor would be common sense: it makes the notices both better and less expensive.

Health plans anticipate cost savings by providing electronic disclosures.

Currently, ERISA health plans provide documents to all or select enrollees, which include the plan contract, Explanation of Benefits (EOB), Summary Plan Description (SPD), Summary of Material Modification (SMM), and Summary of Material Reduction to plan members (enrollees), as required by law and regulation. These documents provide essential information to plan enrollees to understand their coverage, any modifications to that coverage, and information necessary to take action on items such as appeals of benefit determinations. There are, of course, administrative costs expended to produce, print, and distribute these documents to all enrollees. Such costs would be reduced by an electronic disclosure safe harbor. For example, 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 alone. Research shows most employees prefer receiving information about benefits electronically³ and we anticipate this trend will continue to accelerate moving forward.

Enrollees prefer electronic communications.

Health plans report that member surveys indicate plan participants prefer electronic communications and expect that preference to increase as younger enrollees constitute a larger share of plan memberships. Further, we believe flexibility to provide these required documents to an electronic address would increase the accessibility of these documents when enrollees need the information they contain. This flexibility should include the opportunity to provide the electronic disclosures to the enrollee through an electronic delivery of the enrollee's preference. The text of the pension proposed rule indicates the documents would need to be available on a

³ 62 percent of employees with workplace health insurance report that electronic communications are their preference in a 2016 Harris Poll "What Your Employees Think About Your Benefits Communication." <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/open-enroll-benefits-confusion.aspx>

dedicated website. While retirement plan servicers operate online portals where plan participants may access account information, documents, messages, and investment balances, these dedicated account sites are less common for employee health benefit plans. We urge that the enrollee's preference be considered and that a requirement to develop a new website be avoided. As this safe harbor would be discretionary and require plan documents be delivered in a physical format upon request, such a safe harbor would ensure individual employers may meet the specific needs of their employees and retirees, while benefitting both parties through reduced costs.

There is strong precedent for providing electronic communications for both pension and welfare benefit plans, governed by a similar statutory scheme.

Should the Department finalize a rule establishing a safe harbor for pension plans governed by Title I of ERISA, it would be appropriate to similarly establish a safe harbor for welfare benefit plans, given the similar statutory scheme governing both and, importantly, the applicability of the 2002 electronic disclosure final rule (29 CFR 2520) to both types of plans. In the time since the 2002 rule was promulgated, there have been immeasurable advances in electronic media and significant growth in utilization of internet platforms, with access to digital documents through web browsers, e-mail, and mobile applications becoming commonplace. Indeed, the preamble to the 2002 final rule notes: "The electronic provision of ERISA disclosures and the corresponding amount of savings is likely to grow in the future, as participants' access to and comfort with electronic media both at work and at home increases, as plans' use of such media expands, and as some sponsors apply new technologies more broadly to disclosures to beneficiaries or former participants or to disclosures that include information specific to individuals." The Department similarly acknowledges technological advancements in the preamble to this Proposed Rule, including a statement that "[t]he Department believes that these access and usage rates, to date and as they continue in the future, may increase the number of individuals for whom electronic delivery of ERISA disclosures is appropriate or preferred." We agree, and believe it is a natural extension of this principle that additional options for electronic delivery would be appropriate for welfare benefit plans.

Health plans and sponsors would benefit from a longer notice and comment period to supply detailed answers and data.

The Department lays out 21 questions in the form of a Request for Information contained within this Proposed Rule, eliciting detailed and relevant information to inform the Department on important details related to how electronic disclosure of ERISA-required information would be implemented. There would likely be similar questions germane to welfare benefit plans. With sufficient time through future rulemaking specific to this topic, health plan sponsors and administrators can provide answers to the Department to help guide the rulemaking process. We

November 21, 2019
Page 4

urge the Department to issue a Request for Information on the topic of electronic disclosure of welfare benefit plans and suggest a 90-day comment period to allow for enough time to research and provide detailed answers to any questions posed by the Department or the tri-agencies.

We look forward to providing more detailed responses on the potential impacts of a new safe harbor for employee welfare benefit plans should the Department commence rulemaking on the topic.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Beck", is written over a light blue rectangular background.

Adam S. Beck
Vice President, Employer Health Policy & Initiatives