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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

Attention: Electronic Disclosure by Employee Benefit Plans  
RIN: 1210-AB90

Dear Sir or Madam:

UNITE HERE HEALTH (UHH) is pleased to submit comments in response to recent proposed regulations provided by the U.S. Department of Labor (Department) related to electronic disclosure by employee benefit plans. UHH is a national Taft-Hartley fund that represents over 250,000 covered lives across the United States in more than 40 states. For over four decades, UHH has provided comprehensive health care benefits to employees in the hospitality industry.

UHH welcomes and supports the proposed electronic disclosure regulations. Our participants do not use email as part of their daily work activities; however, they do utilize other electronic communication methods like smartphones. The proposed regulations will make it possible for many more plan participants and beneficiaries to receive required disclosures via electronic media. As proposed, the Department limited application of the new safe harbor to only ERISA pension plans.

Our principal comment is that the new safe harbor regulations should likewise apply to ERISA health and welfare plan required disclosures. For all the same reasons cited in the preamble supporting the new pension plan safe harbor, ERISA welfare plans, their participants and their beneficiaries would benefit tremendously from modernized disclosure options. In addition to our comments on the proposed regulations, UHH is responding to certain requests for information related to the effectiveness of ERISA disclosures.

#### **I. Comments on the Proposed New Safe Harbor**

Expanding the rules governing electronic delivery of welfare plan disclosures (with the recipient's right to receive free paper versions on request) would provide participants and beneficiaries with better access to organized and searchable up-to-date health plan materials. In fact, an individual's ability to access health plan materials is critical and very time sensitive. Unlike pension plans, participants and beneficiaries utilize the benefits provided by their health

plan on a regular, ongoing basis. The traditional method of sending disclosures via mail is not effective and is very cumbersome for participants to manage. The notice and access framework in the proposed regulations would provide individuals the ability to search and review their health plan information as they need it and from anywhere they chose.

Furthermore, as noted with respect to pension plans, greater use of electronic disclosures would defray significant printing and mailing costs for health plans as well. During a recent 12-month period, UHH spent over \$1 million in printing and mailing required disclosures. These plan assets can be much better utilized in providing healthcare benefits. Use of electronic communications also will simplify administration and streamline plan recordkeeping.

According to the preamble, the Department has chosen not to include health plans in the proposed regulations at this time because welfare plan disclosures “may raise different considerations” that need to be reviewed with the Treasury Department and the Department of Health and Human Services. The availability of comprehensive, affordable healthcare is a significant issue in our country. We respectfully request that the inclusion of welfare plans be made a priority and incorporated in the final regulations. Health plans already are subject to the Health Insurance Portability and Accountability Act (HIPAA), which imposes requirements on the disclosure of protected health information.

If the Department and the other agencies decide to address welfare plan specific disclosures in the future, we request the final regulations include, at a minimum, the welfare plan Summary Plan Description (SPD); Summary of Material Modification (SMM) and Summary Annual Report (SAR). ERISA Title I requires both pension and welfare plans issue these three specific disclosures, all of which contain no individualized data. As a result, there is no reason they should be treated inconsistently.

*A. Notice of Internet Availability via text message*

With regards to the new safe harbor framework, the Department has proposed that plans provide a Notice of Internet Availability each time a document is posted. Specifically, each Notice of Internet Availability should include: a prominent statement, such as “Disclosure About Your [Retirement] Plan;” a statement that “Important information about your [retirement] plan is available at the website address below;” a brief description of the covered document; the internet website address of the covered document; a statement of the right to request and obtain a paper version free of charge; an explanation of how to exercise this right; a statement of the right to opt out of receiving documents electronically and how to exercise such right; and a telephone number. Considering smartphones limit the number of characters in a single text message, we respectfully ask the Department consider streamlining the required elements in the notice or provide guidance on how this requirement may be met when the notice is delivered via text message.

## **II. Responses to specific Department Requests for Information**

UHH agrees the Department needs to separately re-examine the effectiveness of plan disclosures, many of which were developed decades ago. To assist the Department, we are responding to the following numerically identified requests for information. In general, UHH supports deregulation and more flexibility for plans to determine the format, design and delivery that best suits their members.

*Q6. Some people have indicated that at least some ERISA documents are too voluminous, complex or both.*

Based on our experience and feedback from our membership, we believe both the SPD and the Consolidated Omnibus Budget Reconciliation Act (COBRA) election notices are too voluminous. The SPD has become more like a book as opposed to a summary guide. On average, our cost to print and mail one SPD is about \$20, and we spend over \$300,000 annually. With respect to COBRA election materials, UHH spends around \$200,000 annually. Despite the significant number of election mailings, we currently have only 174 individuals on COBRA. In the hospitality industry, members can gain and lose coverage multiple times during a year. Our members have complained about the repeated receipt of the voluminous notice and have commented that it is a waste of resources. In fact, some members have informed us that they now just throw away the packet without reading the material. We support the Department's suggestion elsewhere in this request that it would be better to provide a brief, clear and accurate summary of key information, coupled with access to more detailed information online and upon request.

*Q9. Is there redundant or inconsistent information disclosed to participants under current rules? If so, which information?*

There is indeed redundant information provided by health plans because some of the information in "stand-alone" notices is repeated in the SPD. Some examples include: (1) Notice of HIPAA Special Enrollment Rights; (2) Initial COBRA Notice; (3) Women's Health & Cancer Rights Act Notice; and (4) HIPAA Privacy Notice.

In addition, there is redundancy and timing inconsistencies with the Summary of Benefits and Coverage (SBC) and SMMs. When a health plan makes a mid-year benefit change, the rules may require a plan send two separate mailings (an SBC and an SMM) describing the same change. Further, the timing requirements of the two disclosures are not the same. We understand an SMM can serve to fulfill the SBC disclosure requirements. However, that is only true if the SMM is issued in compliance with the SBC timing rule, which is not always feasible. The receipt of two different documents that describe the same benefit change in a different format and design is very confusing for our members.

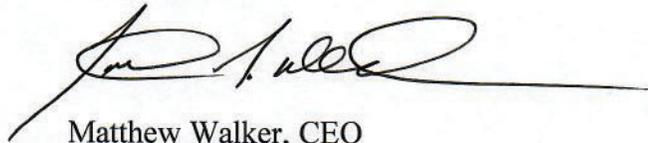
*Q11. Does the design of the disclosure impact the likelihood that participants will read and understand the notice? Would it be appropriate for the Department to require particular design elements?*

Health literacy best practices recommend concise, simple language and clear visuals. The Department should encourage simple and brief summaries of information. In our opinion, it would not be appropriate for the Department to mandate particular design elements. For example, the required format, design and content of an SBC is prescribed in great detail, and plans can only make limited changes. However, health plans know their specific participant population much better and should have flexibility to tailor their communications.

**III. Conclusion**

We thank the Department for the opportunity to comment on these proposed regulations that provide much needed modernization to the electronic delivery of required disclosures. We hope the Department will recognize the immediate need to extend the new safe harbor to health and welfare plans. Please do not hesitate to contact us if you have any questions about our comments or need additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew Walker", with a long horizontal line extending to the right.

Matthew Walker, CEO  
UNITE HERE HEALTH