COMMITTEE ON
EDUCATION AND WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

September 21, 2026

The Honorable Daniel Aronowitz
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Electronic Disclosure by Group Health Plans Under ERISA (RIN 1210–AC35)

Dear Assistant Secretary Aronowitz:

I write to provide the following comments on the proposed rule by the Department of Labor (Department) entitled, "Electronic Disclosure by Group Health Plans Under ERISA"[1] (Proposed Rule). The Proposed Rule is inconsistent with the statutory purpose of the *Employee Retirement Income Security Act*[2] (ERISA) because it prioritizes the interests of employers and health insurance companies over the millions of workers and their families who receive coverage through employment-based group health plans. Further, I am concerned that the safe harbor the Department proposes will make it less likely consumers actually receive numerous important disclosures that are critical to understanding and accessing their earned health benefits. I urge the Department to withdraw the Proposed Rule.

The Proposed Rule would grant administrators, such as employers, and health insurers a safe harbor that is intended to dramatically expand the use of electronic disclosures that goes far beyond the already permissive standard that is provided under the Department's current electronic disclosure regulation.[3] Electronic disclosures are currently permitted in two situations: (1) when the recipient of the disclosure has the ability to access electronic documents

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[1] Electronic Disclosure by Group Health Plans Under ERISA, 91 Fed. Reg. 46,602 (Jul. 23, 2026), https://www.federalregister.gov/documents/2026/07/23/2026-14917/electronic-disclosure-by-group-health-plans-under-erisa (hereinafter Proposed Rule).
[2] Pub. L. No. 93-406 (1974).
[3] Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans, 67 Fed. Reg. 17,264 (Apr. 9, 2002), https://www.federalregister.gov/documents/2002/04/09/02-8499/final-rules-relating-to-use-of-electronic-communication-and-recordkeeping-technologies-by-employee.

through their work and whose job requires accessing electronic documents as an integral component of their duties (the "wired at work" standard), or (2) when the recipient affirmatively consents to the receipt of electronic disclosures.[4] The Department has found that, although this approach requires a case-by-case determination to ensure consumers' preferences are respected, the "wired at work" standard nonetheless has facilitated the widespread adoption of electronic delivery, with an estimated 67.8 percent of individuals currently receiving ERISA disclosures electronically.[5]

In 2020, the Department issued a Final Rule establishing a safe harbor that allowed for the default use of electronic disclosures by retirement plans covered by ERISA.[6] This Final Rule was promulgated despite the objection of bipartisan Members of Congress,[7] consumer groups,[8] and advocates for rural communities.[9] Although it only applied to retirement plans, the Department reserved the issue of facilitating the use of electronic disclosures by health and other welfare plans for future consideration.[10]

With the Proposed Rule, the Department now seeks to extend a similar safe harbor to the numerous disclosures that ERISA requires of group health plans. In doing so, the Department has prioritized the convenience and financial interests of employers and insurance companies while disempowering workers, retirees, and their families from meaningfully accessing important documents. Under the proposed safe harbor, disclosures may be provided through electronic media to any individual who provides either an email address or a phone number to their employer.[11] This robs consumers of meaningful choice, as the Department proposes to expressly permit employers to condition employment on providing an email or phone number or allowing employers to simply assign an email address or phone number to the employee.[12] Moreover, once workers are opted into electronic disclosures, employers and insurers would be able to meet the regulation's requirements by simply posting the materials on a website, without ever sending any materials directly to their intended recipients. Instead, consumers would

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[4] 29 C.F.R. § 2520.104b-1(c)(2).
[5] Proposed Rule at 46,617.
[6] Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, 85 Fed. Reg. 31,884 (May 27, 2020), https://www.federalregister.gov/documents/2020/05/27/2020-10951/default-electronic-disclosure-by-employee-pension-benefit-plans-under-erisa.
[7] *See* Letter from the Hon. Morgan Griffith et al. to the Hon. Preston Rutledge, Asst. Sec'y, Emp. Benefits Sec. Admin., U.S. Dep't of Lab. and the Hon. Eugene Scalia, Sec'y, U.S. Dep't of Lab., regarding *Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA* (Nov. 22, 2019), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90/00228.pdf.
[8] *See* Letter from David Certner, AARP to the Hon. Preston Rutledge, Asst. Sec'y, Emp. Benefits Sec. Admin., U.S. Dep't of Lab., regarding *Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA* (Nov. 22, 20219), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90/00225.pdf.
[9] *See* Letter from the Coalition for Paper Options to the Hon. Eugene Scalia, Sec'y of Lab., regarding *Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA* (Nov. 22, 2019), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90/00198.pdf.
[10] 29 C.F.R. § 2520.104b-31(c)(2).
[11] Proposed Rule at 46,606.
[12] *Id*.

simply be provided a link to the website through an electronic Notice of Internet Availability (NOIA) that can be combined for multiple covered documents and can be sent as much as 14 months after the document is actually posted online, while the document itself is only required to remain on the website for one year.[13] This could potentially leave individuals unaware of the existence of documents prior to their removal from the website. While this may be convenient for employers and insurers, it would impose significant delays on consumers who wish to access their documents—if they are even able to do so at all.

Most troubling, the Department has seemingly paid scant attention in the Proposed Rule to the crucial issue of whether consumers actually receive the documents to which they are entitled. Under the Proposed Rule, employers and insurers would have no duty to ensure that consumers receive, much less read, the documents they are sent—the only obligation they have is to simply monitor whether the NOIA sent by email or text messages "bounces back."[14] This is insufficient for ensuring the "actual receipt" of documents, as described under the current regulation.[15] The Department could remedy this deficiency by requiring employers and insurance companies to verify that all documents are accessed by the intended recipient through analytic methods. If documents are not accessed by the intended recipients, the Department should require employers and insurance companies to promptly provide paper disclosures.

The Department's failure to consider the importance of ensuring the actual receipt of crucial documents will have harmful consequences for consumers. While some documents, such as Summary Plan Descriptions or Summaries of Material Modifications, are not time sensitive, others have strict deadlines that require prompt action by plan participants. For example, under the *Consolidated Omnibus Budget Reconciliation Act of 1985* (COBRA),[16] an individual has 60 days to elect to enroll in continuation coverage after a qualifying event, such as a job loss.[17] Similarly, under the ERISA Claims Procedure regulation, a claimant has 180 days to appeal an adverse benefit determination by a group health plan.[18] Should the Department move forward with the Proposed Rule, it should, at a minimum, require that employers and insurance companies ensure actual receipt of time-sensitive documents.

Regrettably, the Department has done little to explain why a safe harbor to further facilitate electronic disclosure is necessary, other than the preamble's extensive discussion of the windfall savings that employers and insurance companies will enjoy if the Proposed Rule is finalized.[19] In fact, the Department states plainly that "[t]he goal of this proposed rule is to apply the efficiencies and cost savings achieved by the 2020 safe harbor with respect to pension benefit plans to group health plans."[20] This goal ignores ERISA's statutory purpose of promoting "the interests of participants in employee benefit plans and their beneficiaries [] by requiring the

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[13] *Id*.
[14] *Id*. at 46,609.
[15] 29 C.F.R. § 2520.104b-1(b)(1) ("the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals.").
[16] Pub. L. No. 99-272 (1985).
[17] 29 U.S.C. § 1165(a)(1).
[18] 29 C.F.R. § 2560.503-1(h)(3).
[19] Proposed Rule at 46,621.
[20] *Id*. at 46,604.

disclosure and reporting to participants and beneficiaries of financial and other information."[21] It is unfortunate that the Department's articulated priorities deviate so significantly from what should be a shared goal of protecting the rights and hard-earned benefits of workers and their families.

Thank you for your consideration of these comments. I urge the Department to withdraw the Proposed Rule and to instead look to put the interests of workers, retirees, and their families first in future rulemakings.

Sincerely,

Robert C. "Bobby" Scott
Ranking Member
House Committee on Education and Workforce

[21] 29 U.S.C. § 1001(b).