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June 3, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
Attention: E-Disclosure RFI

Re: **Department of Labor, Employee Benefits Security Administration, RIN 1210–AB50 Request for Information Regarding Electronic Disclosure by Employee Benefit Plans**

Dear Sir or Madam:

Rocky Mountain Health Plans (RMHP) is pleased to provide the following comments for consideration to the Employee Benefits Security Administration, Department of Labor (DOL) regarding electronic disclosure by employee benefit plans.

General Recommendations

RMHP agrees with comments being submitted by America's Health Insurance Plans (AHIP) recommending that the DOL issue a rule allowing group health plans to electronically distribute information to participants and beneficiaries who have the effective ability to access the information electronically, provided clear notice is given of the availability of the electronic documents and the right to obtain a paper copy of the information without charge.

In addition, RMHP recommends that the DOL rule recognize the wide variety of media currently available to Americans and allow flexibility in the kinds of media that may be used to provide documents electronically to participants and beneficiaries.

Access and Usage Questions

Below are RMHP's responses to the following access and usage questions posed in the RFI.

Questions 11-13:

> 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?
> 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?
> 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

Regarding questions 11, 12, and 13, we recommend that the rules finally adopted be standard for all types of plans, disclosures and recipients. We believe that maintaining and following different standards for these categories would prove burdensome, confusing to both plans and their members, and prone to error. Also, the opportunity to obtain a hard copy at no cost will provide any necessary flexibility for individual situations in which electronic access does not meet the needs of participants and beneficiaries.

Question 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

A participant should be allowed to opt out and receive paper disclosure under any circumstance and for any reason.

Question 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

Due to wide availability and use of electronic devices and access, a majority of consumers are already conducting business electronically, and many prefer electronic documents over paper for ease of storage and transmission. However, due to the tendency of people generally to adhere to the status quo, and for various factors (e.g., natural tendencies to avoid change; demands of home, work and family, and other priorities) many consumers who would prefer to conduct business electronically would not take the time to opt-in. Therefore, RMHP recommends the opt-in requirement be replaced with an opt-out requirement. This would result in a higher level of participation, which in turn would encourage employers and plan sponsors to make the initial investment in an electronic distribution system – see response to Question 25. The ability of participants and beneficiaries to opt out at any time and for any reason and receive a hard copy at no charge would help mitigate any adverse effects.

Question 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

For the reasons stated above regarding the wide use and availability of electronic devices and access and their use for business purposes and also due to the benefits of having a standardized process, RMHP recommends that E-SIGN should apply for all transactions including the cancellation or termination of health insurance or benefits electronically.

Question 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

Perhaps require a "Time-Sensitive" label in the notice or subject line of the notice, and require review of returned email and appropriate follow-up, but still allow for the electronic delivery of these documents.

Question 22:

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

Response

There is the potential for this but it could be addressed through education and communication. There are also tools that could be implemented to confirm email deliverability.

Question 23:

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

Response

This could include timely review of undeliverable email messages and follow-up surveys.

Question 24:

What are current practices for ensuring that the e-mail address on file for the participant is the most current email address? For example, what are the current practices for obtaining and updating e-mail 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

This could include verifying the email address at every point of contact with participants and beneficiaries. Just as there used to be a section for "address correction" on printed material, all electronic correspondence could include an "email address correction" section. In addition, phone calls to participants can be used to confirm the current email address.

Question 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

Significant programming and, in some cases, hardware costs are incurred when initially setting up an electronic distribution system. The costs associated with expanding electronic distribution as opposed to initial setup may be minimal in comparison.

System costs and benefits are very consistent for different types of participants, sponsors, plans and disclosures. For this reason, and for the reasons explained in our Question 19 response, an opt-out approach would provide an incentive to make the initial investment in developing systems due to a greater anticipated participation rate in electronic distribution; a positive return on investment (ROI) would be expected, yielding greater cost savings which could be passed on to participants and beneficiaries. An opt-out approach also is greener since fewer documents would be printed. In addition, an opt-out approach is now more acceptable to consumers than when the DOL safe harbor was first adopted; the prevalence of the Internet, email, and other electronic access tools available to employees and beneficiaries have resulted in a significantly increased comfort level with email/technology.

Participants and beneficiaries who do receive electronic documents and choose to print such documents will incur some printing costs. However, such costs are generally mitigated or even outweighed by the benefits of the find/search features of electronic documents and the ease of storing electronic documents compared to paper.

Question 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

Given that approximately 76.7% of the households in the US have access to the Internet from some location, it is reasonable to anticipate that approximately 25% of participants may “opt out” of electronic documents. While it is difficult to pin point a certain percentage, it is certainly the minority of the participants, given the advances in technology and usage.

Question 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

It is likely that participants would prefer receiving all documents the same way, whether hard copy or electronically, rather than some documents electronically vs. others as paper.

Question 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

It would be more secure to send an email with the disclosure as a link since the link requires security measures to access. A link vs. an attachment is also more efficient in terms of storage space.

Question 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 would provide consistency, predictability and efficiency for benefit plans. However, any standard should take into account confidentiality requirements for plan benefit information. Many people may have access to a person's e-mail account where it could be difficult to ensure confidentiality for the employee. Perhaps a better approach might be to have a secure website and they send an e-mail to the participating telling them there is a notice on the secure website. This would not always guarantee they knew of changes but know where to go to get updates.

In addition, federal contractors have requirements to ensure accessibility. Using an electronic-only means could potentially adversely affect one or more protected groups from getting the information they need. Electronic distribution standards should therefore allow alternatives in these types of instances.

We appreciate the opportunity to provide comments on this important initiative.

Sincerely,

Tim Sherman
Senior Manager of Corporate Compliance
and Regulatory Affairs