DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520 and 2560

RIN 1210–AC35

Electronic Disclosure by Group Health Plans Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a new, additional safe harbor for group health plan administrators to use electronic media (*e.g.,* email or web portal) to furnish documents and information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). This proposal, if finalized, would allow plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available electronically on a website. Individuals who prefer to receive these disclosures on paper will be able to request paper copies and to opt out of electronic delivery entirely. The Department expects that the proposal, if finalized, would improve the effectiveness of the disclosures and significantly reduce the costs and burden to group health plans associated with furnishing many of the recurring disclosures.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by September 21, 2026.

ADDRESSES: You may submit written comments, identified by RIN 1210–AC35 to either of the following addresses:

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail:* You may mail written comments to the following address ONLY: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Electronic Disclosure by Group Health Plans, RIN 1210–AC35.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at *https://www.regulations.gov* and *https://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210. We encourage commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials that have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist the Department in analyzing the comments.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

Plain Language Summary: In accordance with 5 U.S.C. 553(b)(4), a plain language summary of this rule may be found at *https://www.regulations.gov/.*

FOR FURTHER INFORMATION CONTACT: Matthew Meidell or Anthony Singer, Employee Benefits Security Administration, (202) 693–8335.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Disclosure Requirements Under 29 CFR 2520.104b–1 and the 2002 Electronic Disclosure Safe Harbor

In general, under the Employee Retirement Income Security Act of 1974 (ERISA) and 29 CFR 2520.104b–1, group health plan administrators must follow general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals.[1] Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals.[2]

When 29 CFR 2520.104b–1 was originally adopted in 1977, the primary disclosure documents under Title I of ERISA were set forth in Part 1 of Title I. Thereafter, the statute was amended to incorporate disclosure and notice requirements relating to qualified domestic relations orders under Part 2, qualified medical child support orders under Part 6, continuation coverage rights under Part 6, and creditable coverage and other disclosures under Part 7 of Title I.

In 1997, the Department of Labor (Department) amended the general standards for delivery of certain required disclosures by establishing a safe harbor for the use of electronic media by group health plan administrators at 29 CFR 2520.104b–1(c).[3] In 2002, the Department expanded the safe harbor (2002 safe harbor) to apply to disclosures under Title I of ERISA generally, accounting for the expanded scope of required disclosures under ERISA for pension benefit plans and group health plans.[4] Accordingly, group health plan administrators may follow the 2002 safe harbor in paragraph (c) of 29 CFR 2520.104b–1 to satisfy the general delivery requirements when furnishing disclosures electronically. The 2002 safe harbor is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard.[5] Plan administrators may find that other procedures will allow them to meet ERISA's general delivery requirements. However, administrators who satisfy the conditions of the 2002 safe harbor are assured that the general delivery requirements have been satisfied.

The 2002 safe harbor is available only if: first, the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt of transmitted information and protects the confidentiality of personal information relating to the individual's accounts and benefits; second, the electronically delivered documents are prepared and furnished in a manner that is consistent with the style, format, and content requirements applicable to the particular document; third, notice is provided to each participant, beneficiary, or other individual, in

[1] *See* 29 CFR 2520.104b–1.

[2] *See* 29 CFR 2520.104b–1(b)(1).

[3] *See* 62 FR 16979 (Apr. 8, 1997). The 1997 safe harbor permitted the electronic disclosure of summary plan descriptions (SPDs), summaries of material modifications (SMMs), and summaries of material reductions in covered services, and other summaries of plan modifications and SPD changes.

[4] *See* 67 FR 17264, 17266 (Apr. 9, 2002)

[5] The Department of the Treasury and the Internal Revenue Service issued regulations in 2006, at 26 CFR 1.401(a)–21, relating to use of electronic media to provide applicable notices or make participant elections (electronic delivery regulations). 26 CFR 1.401(a)–21(a)(2)(ii) provides that that the electronic delivery regulations apply to any applicable notice or participant election relating to accident and health plans or arrangements under Internal Revenue Code (Code) sections 104(a)(3) and 105, cafeteria plans under section 125 of the Code, Archer MSAs under section 220 of the Code, and health savings accounts under section 223 of the Code.

electronic or non-electronic form, at the time a document is furnished electronically, that apprises the individual of the significance of the document when it is not otherwise reasonably evident as transmitted and of the right to request and obtain a paper version of such document; and fourth, upon request, the participant, beneficiary or other individual is furnished a paper version of the electronically furnished documents.[6]

The 2002 safe harbor applies only to two categories of individual recipients. The first category includes those participants who have the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties.[7] This group is sometimes referred to as being ''wired at work.'' The second category includes participants, beneficiaries, and other persons who are entitled to documents under Title I of ERISA who do not fit into the first category, but who affirmatively consent to receive documents electronically. For this category, the safe harbor assumes the use of electronic information systems beyond the control of the plan or plan sponsor; therefore, relief is available for the second category of individuals only if individuals affirmatively consent to receive documents electronically.[8]

In general, the affirmative consent condition requires plan administrators to ensure that an individual has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent. Alternatively, in the case of documents furnished through the internet or other electronic communication networks, the individual must have affirmatively consented or confirmed consent electronically. The manner in which an individual confirms consent must reasonably demonstrate the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and the individual must have provided an address for the receipt of electronically furnished documents.[9]

In addition, before consenting, the individual must be provided, in electronic or non-electronic form, a clear and conspicuous statement indicating: first, the types of documents to which the consent would apply; second, that consent can be withdrawn at any time without charge; third, the procedures for withdrawing consent and for updating the participant's, beneficiary's, or other individual's address for receipt of electronically furnished documents or other information; fourth, the right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and fifth, any hardware and software requirements for accessing and retaining the documents.[10]

Further, following consent, if a change in such hardware or software requirements creates a material risk that the individual will be unable to access or retain electronically furnished documents, the individual: first, is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents; second, is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and third, again consents in accordance with the requirements above.[11]

B. Additional Electronic Delivery Regulations Applicable to Group Health Plans

In general, group health plan administrators and health insurance issuers offering group health plan coverage may follow the 2002 safe harbor in paragraph (c) of 29 CFR 2520.104b-1 to satisfy the general delivery requirements when furnishing disclosures required under chapter 100 of the Internal Revenue Code (Code), part 7 of ERISA, and title XXVII of PHS Act. Since issuing the 2002 safe harbor, the Department has adopted additional standards for electronic disclosure for specific disclosure requirements applicable to group health plans. Specifically, in 2015, the Departments of Labor, Health and Human Services (HHS), and the Treasury (Treasury) (collectively, the Departments) jointly issued final regulations implementing section 2715 of the Public Health Service Act (PHS Act), added by the Affordable Care Act, which requires group health plans and health insurance issuers providing group or individual health insurance coverage to provide a Summary of Benefits and Coverage (SBC) (the 2015 SBC disclosure rules).[12] These regulations allow electronic disclosure of SBCs if specific criteria are met. The 2015 SBC disclosure rules specify that an SBC may be provided electronically to participants and beneficiaries if it is provided in accordance with the Department's disclosure regulations at 29 CFR 2520.104b–1, including the 2002 safe harbor. Additionally, the 2015 SBC disclosure rules allow electronic disclosure to participants and beneficiaries covered under the plan in connection with online enrollment or online renewal of coverage under the plan; or in response to an online request made by a participant or beneficiary for the SBC.[13]

Under the 2015 SBC disclosure rules, with respect to participants and beneficiaries who are eligible but are not enrolled in coverage, the SBC may also be provided electronically if the format is readily accessible, and the SBC is provided in paper form free of charge upon request. The SBC may also be provided electronically (such as by an internet posting if the plan or issuer timely notifies the individual either in paper form (such as a postcard) or electronically via email that the documents are available on the internet. The notice must include the internet address and must state that the documents are available in paper form upon request.[14]

The Departments also published a final rule in 2020 implementing the transparency in coverage provisions of section 2715A of the PHS Act (TiC final rule).[15] The TiC final rule requires group health plans and health insurance issuers providing group or individual health insurance coverage to disclose cost-sharing information to participants, beneficiaries, and enrollees through an internet-based self-service tool, as well as in paper form upon request.[16]

[6] *See* 29 CFR 2520.104b–1(c)(1)(i) through (iv).

[7] *See* 29 CFR 2520.104b–1(c)(2)(i)(A) and (B).

[8] *See* 29 CFR 2520.104b–1(c)(2)(ii)(A) through (D).

[9] *See* 29 CFR 2520.104b–1(c)(2)(ii)(B).

[10] *See* 29 CFR 2520.104b–1(c)(2)(ii)(C).

[11] *See* 29 CFR 2520.104b–1(c)(2)(ii)(D).

[12] 80 FR 34292 (June 16, 2015).

[13] 26 CFR 54.9815–2715(a)(4)(ii)(A), 29 CFR 2590.715–2715(a)(4)(ii)(A), 45 CFR 147.200(a)(4)(ii)(A).

[14] 26 CFR 54.9815–2715(a)(4)(ii)(B), 29 CFR 2590.715–2715(a)(4)(ii)(B), 45 CFR 147.200(a)(4)(ii)(B).

[15] 85 FR 72158 (Nov. 12, 2020). *See also* On December 23, 2025, the Departments published proposed rules that, among other things, would amend certain of the public disclosure requirements to require new contextual files and additional data elements. 90 FR 60432 (Dec. 23, 2025).

[16] 26 CFR 54.9815–2715A2(b)(2), 29 CFR 2590.2715A2(b)(2), 45 CFR 147.211(b)(2). The Departments have proposed to amend the TiC final rule to require, among other things, that the pricing information that is available through the internet-based self-service tool and on paper (upon request) be made available by phone. This provision would implement requirements under section 9819 of the Code, section 719 of ERISA, and PHS Act section

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Additionally, the TiC final rule requires the public disclosure of in-network provider rates for covered items and services, out-of-network allowed amounts and billed charges for covered items and services, and negotiated rates and historical net prices for covered prescription drugs.[17] The Departments require that this information be available on a public website, in a machine-readable file, and accessible to any person, free of charge, and without conditions.[18] A requirement to establish a user account, password, other credentials, or submission of personally identifiable information to access the file are examples of conditions prohibited under the rules.[19]

C. 2020 Electronic Disclosure Rulemaking for Pension Benefit Plans

On May 27, 2020, the Department issued Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA (2020 safe harbor).[20] The 2020 safe harbor amended part 2520 by adding 29 CFR 2520.104b–31, which provides an additional, optional method for compliance with ERISA's general standard for furnishing or delivering disclosures to participants and beneficiaries. This 2020 safe harbor allows plan administrators of pension benefit plans to furnish certain required disclosures using a ''notice-and-access'' model: these plan administrators must notify plan participants and beneficiaries about the online disclosures, provide information on how to access the disclosures, and inform participants and beneficiaries of their rights to request paper copies or opt out completely. Under the 2020 safe harbor, pension plan administrators also have the option to use email to send disclosures directly to participants and beneficiaries. The 2020 safe harbor also includes additional protections for participants and beneficiaries, such as accessibility and readability standards for online disclosures, system checks for invalid electronic addresses, and website security measures to preserve confidentiality of personal information.[21]

The Department has received positive feedback from stakeholders regarding the 2020 safe harbor. Stakeholders that currently rely on the 2020 safe harbor for pension benefit plans have acknowledged significant efficiencies in using electronic delivery to furnish required ERISA disclosures. Therefore, the Department is proposing these rules to extend the efficiencies and cost savings achieved by increased electronic delivery by pension benefit plans under the 2020 safe harbor to group health plans. The 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.

D. Need for Rulemaking To Expand Default Electronic Disclosure to Group Health Plans

Group health plans are subject to multiple notice and disclosure requirements required only under ERISA such as Summary Plan Description (SPD), plan document, summary of material modifications (SMM), and summary annual report (SAR). In addition to these ERISA-specific disclosures, group health plans are required to comply with other notice and disclosure requirements included in Title I of ERISA under which the Department has shared jurisdiction with HHS and Treasury. Many Federal laws have been enacted to amend ERISA to provide important protections for participants and beneficiaries of group health plans and health insurance coverage offered in connection with group health plans. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)[22] added chapter 100 to the Code, part 7 to ERISA, and title XXVII to the PHS Act, which set forth portability and nondiscrimination rules with respect to health coverage. These provisions of the Code, ERISA, and the PHS Act were later augmented by other laws, including the Mental Health Parity Act of 1996,[23] the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA),[24] the Newborns' and Mothers' Health Protection Act,[25] the Women's Health and Cancer Rights Act,[26] the Genetic Information Nondiscrimination Act of 2008,[27] the Children's Health Insurance Program Reauthorization Act of 2009,[28] Michelle's Law,[29] the Patient Protection and Affordable Care Act[30] (as amended by the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act (ACA)),[31] Division BB of the Consolidated Appropriations Act, 2021 (CAA, 2021), which includes the No Surprises Act (NSA),[32] and the Consolidated Appropriations Act, 2026.[33] These laws and their implementing regulations contain notice and disclosure requirements enforced by the Departments.

The 2020 safe harbor reserved paragraph (c)(2) so that the Department could continue to study the future application of the proposed rule to the broad range of documents that must be furnished to participants and beneficiaries of employee welfare benefit plans.[34] As the Department explained in the preamble to the 2020 safe harbor, the large range of welfare plan disclosures, such as group health plan disclosures, may raise different considerations, such as pre-service claims review and access to emergency and urgent health care. Moreover, the Department noted that it shares interpretive jurisdiction over many group health plan disclosures with the Treasury and HHS. In considering any possible new electronic delivery safe harbor for group health plan disclosures in the future, the Department explained the need to consult with these other Departments.

Accordingly, under current rules, plan administrators for group health plans can generally only rely on the 2002 safe harbor to deliver required ERISA disclosures electronically. As described in Section I.A of this preamble, the 2002 safe harbor is limited to two categories of participants and beneficiaries—those who are

2799A–4, as added by section 114 of the No Surprises Act. 90 FR 60432 (Dec. 23, 2025).

[17] 26 CFR 54.9815–2715A3(b)(1), 29 CFR 2590.2715A3(b)(1), 45 CFR 147.212(b)(1).

[18] 26 CFR 54.9815–2715A3(b)(2), 29 CFR 2590.2715A3(b)(2), 45 CFR 147.212(b)(2).

[19] *Id.*

[20] 85 FR 31884 (May 27, 2020).

[21] The Department has separately proposed amendments to the 2002 and 2020 electronic disclosure safe harbors to implement section 338 of the SECURE 2.0 Act of 2022, which requires certain pension benefit statements to be furnished on paper in specified circumstances. 91 FR 9213 (Feb. 25, 2026). That proposal addresses statutory requirements applicable to pension plans, whereas this NPRM focuses on expanding electronic disclosure for group health plans. Together, these rulemakings reflect the Department's broader effort to modernize electronic disclosure frameworks across employee benefit plans while accounting for distinct statutory frameworks.

[22] Public Law 104–191 (Aug. 21, 1996.

[23] Public Law 104–204 (Sept. 26, 1996).

[24] Public Law 110–343 (Oct. 3, 2008).

[25] Public Law 104–204 (Sept. 26, 1996).

[26] Public Law 105–277 (Oct. 21, 1998).

[27] Public Law 110–233 (May 21, 2008).

[28] Public Law 111–3 (Feb. 4, 2009).

[29] Public Law 110–381 (Oct. 9, 2008).

[30] Public Law 111–148 (Mar. 23, 2010).

[31] Public Law 111–152 (Mar. 30, 2010).

[32] Public Law 116–260 (Dec. 27, 2020).

[33] Public Law 119–75 (Feb. 2, 2026).

[34] As noted in the 2020 safe harbor, the Department proposed this reservation in accordance with Executive Order 13847 (Aug. 31, 2018), which focused the Department's review on retirement plan disclosures. The Department did not interpret Executive Order 13847 as limiting the Department's ability to take future action with respect to employee welfare benefit plans, especially to the extent similar policy goals, including the reduction of plan administrative costs and improvement of disclosures' effectiveness, may be achieved. 85 FR 31884, 31890 (May 27, 2020).

''wired at work'' or those who are not ''wired at work'' but affirmatively consent to receive documents electronically.

The increased prevalence of technology and digitization of the workplace [35] has allowed more group health plans to rely on the 2002 safe harbor by electronically delivering required notices and disclosures on computers that participants are already using within the scope of their employment (*i.e.,* those who are ''wired at work''). Despite such widespread availability of the 2002 safe harbor, stakeholders have expressed that the 2002 safe harbor is inefficient compared to the 2020 safe harbor. For example, group health plans relying on the 2002 safe harbor are required to make case-by-case determinations of whether a participant is ''wired at work'' and can be provided with documents through electronic delivery without consent or whether there has been a change in hardware or software requirements that creates a material risk that an individual who has given affirmative consent will be unable to access or retain electronically furnished documents. Because plans are required to make these determinations to separate their participants and beneficiaries into groups of who can and who cannot receive electronic delivery, the efficiency of using an electronic delivery method is relatively limited. Further, under current rules, participants and beneficiaries who do not fall into one of the two permitted categories must receive physical copies of most required disclosures, which imposes printing and mailing costs on plans. Accordingly, stakeholders have expressed a desire to apply the 2020 safe harbor to group health plan disclosures to further expand the ability to use electronic delivery for more participants and beneficiaries and to harmonize such electronic delivery methods across group health plans and pension benefit plans.

The Department also recognizes that substantial advances in technology have been achieved since it codified the 2002 safe harbor, and individuals' access to and use of electronic media has continued to increase. There are estimates that over 95 percent of adults in the U.S. use the internet.[36] Additionally, it is estimated that 95 percent of U.S households had at least one type of computer in 2021,[37] and that about 91% of Americans now own a smartphone.[38] Electronic delivery allows for faster delivery of documents compared to traditional mailing and allows participants to receive the disclosures in a way to which they have grown accustomed (*e.g.,* through email or a web portal). The Department has already updated certain timing requirements through rulemaking in response to the adoption of electronic communication. For example, the Department has issued rulemaking to reduce the amount of time within which a group health plan must notify a claimant of a benefit determination under the plan's claims and appeals procedures.[39] This reduction was implemented due to the Department's expectation that electronic communication would enable faster decision making.[40] Electronic delivery also lowers administrative costs associated with printing and mailing documents.

In accordance with stakeholder feedback and the increasing use of electronic documents, the Department is now revisiting the decision to exclude employee welfare benefit plans from the scope of the 2020 safe harbor. The Department has also consulted with the Treasury and HHS, who concur with the need for an additional electronic safe harbor that would be available for group health plans.

Accordingly, in this document, the Department proposes to amend part 2520 by adding a new section 2520.104b–32 to provide a new safe harbor to group health plan administrators to rely on for disclosure through electronic media that largely mirrors the 2020 safe harbor. This proposal would not change either of the existing safe harbors. As proposed, plan administrators for group health plans who decide to continue relying on the existing 2002 safe harbor for electronic delivery, or to furnish paper documents by hand-delivery or by mail, can continue to do so. Under the proposed 29 CFR 2520.104b–32, a plan administrator for a group health plan that complies with the requirements set forth in this alternative method for disclosure would be permitted to utilize this method to electronically disclose certain covered documents to covered individuals, as described below. As discussed later in this preamble, under 29 CFR 2520.104b–32, the proposed new safe harbor would be available to group health plans, as defined under ERISA section 733.[41] The proposed safe harbor would not be available to all welfare benefit plans under section 3(1) of ERISA, such as benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services that are not group health plans. These welfare benefit plans are subject to fewer disclosure requirements with different considerations that must be taken into account when expanding or changing electronic delivery standards for such plans. Therefore, these proposed rules only cover the notices required under parts 6 and 7 of ERISA, in addition to other ERISA disclosures. The Department requests comments on the proposal to establish a new default electronic disclosure safe harbor for group health plans, including whether this proposed safe harbor should be extended to other employee welfare benefit plans.

II. Proposed Rule—Alternative Method for Disclosure Through Electronic Media—Notice and Access

A. Alternative Disclosure Through Electronic Media

Paragraph (f) of 29 CFR 2520.104b–1 states that as an alternative to the 2002 safe harbor, the plan administrator of an employee benefit plan is deemed to satisfy the general disclosure requirements of paragraph (b)(1) by complying with the requirements of 29 CFR 2520.104b–31, which sets forth the 2020 safe harbor currently available to pension benefit plans. This proposed rule amends paragraph (f) to allow group health plan administrators to rely on proposed 29 CFR 2520.104b–32, which would introduce a new safe harbor that would satisfy the general disclosure requirements of paragraph (b)(1).

Further, the Department proposes to establish at proposed 29 CFR 2520.104b–32(a) that as an alternative to

[35] *See* Brookings, *Digitalization and the American workforce* (Nov. 2017), *https://www.brookings.edu/articles/digitalization-and-the-american-workforce/.*

[36] Pew Research Center, *internet Broadband Fact Sheet* (Nov. 20, 2025), *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/;* U.S. Census Bureau, *Computer and internet Use in the United States: 2021,* (June 18, 2024), *https://www.census.gov/newsroom/press-releases/2024/computer-internet-use-2021.html.*

[37] *Id.*

[38] Pew Research Center, *Mobile Fact Sheet* (Nov. 20, 2025), *https://www.pewresearch.org/internet/fact-sheet/mobile/.*

[39] 75 FR 43330, 43333 (July 23, 2010).

[40] *Id.*

[41] Under ERISA section 733, the term ''group health plan'' means an employee welfare benefit plan to the extent that the plan provides medical care (as defined in section 733(a)(2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of title 26).

the 2002 safe harbor set forth at 29 CFR 2520.104b–1(c), the administrator of a group health plan as defined under section 733(a)(1) of ERISA satisfies the general furnishing obligation in 29 CFR 2520.104b–1(b)(1) by complying with the notice, access, and other requirements set forth at proposed paragraphs (b) through (k) of proposed 29 CFR 2520.104b–32, as applicable.

B. Covered Individuals

Consistent with the provisions of 29 CFR 2520.104b–31(b) for pension benefit plans, this proposed rule would define a covered individual at 29 CFR 2520.104b–32(b)(1) as a participant, beneficiary, or other individual entitled to covered documents and who provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an email address or internet-connected mobile-computing-device (*e.g.,* smartphone) number (*e.g.,* using Short Message Service), at which the covered individual may receive a written notice of internet availability (NOIA), described in proposed paragraph (d). This electronic address may be provided when he or she begins participating in the plan, as a condition of employment, or otherwise. Alternatively, if an electronic address is assigned by an employer to an employee for employment-related purposes that include but are not limited to the delivery of covered documents, the employee is treated as if he or she provided the electronic address. To rely on the proposed safe harbor, the group health plan administrator must receive an email or number to communicate with a covered individual, as this information is critical to ensuring participants are ultimately able to access the covered documents described in proposed 29 CFR 2520.104b–32(c) and discussed later in this preamble. At the same time, the Department seeks to provide flexibility to group health plan administrators, and to covered individuals, with respect to how covered documents will be delivered and received, such as via a company email address provided to the individual upon employment, a personal email address, or a company-issued or personal smartphone device.

Additionally, this proposed rule would also add 29 CFR 2520.104b–32(b)(2) to provide that a dependent child who is a beneficiary under the group health plan qualifies as a covered individual if he or she has attained 18 years of age and has provided to the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) an electronic address to receive covered documents. Many of the group health plan disclosures that are required to be provided by a group health plan under ERISA are required to be provided to both participants and beneficiaries. The Department is of the view that dependent children who have attained age 18 should have the same opportunity to be apprised of information relating to their health care, and accordingly, have proposed paragraph (b)(2) to ensure adult dependent children are able to independently receive such documents electronically upon reaching an appropriate age.

C. Covered Documents

Consistent with the provisions of 29 CFR 2520.104b–31(c) for pension benefit plans, the Department proposes to add 29 CFR 2520.104b–32(c), providing that in the case of a group health plan as defined in section 733(a)(1) of ERISA, a covered document would include any document or information that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act. A group health plan administrator is not required to furnish covered documents pursuant to the proposed safe harbor if the group health plan administrator prefers a different, permitted method of furnishing some of the documents. As discussed earlier in this preamble, group health plans are subject to a large range of notice and disclosure requirements. These include certain notices and disclosures required only under ERISA, such as an SPD, plan document, or SMM, as well as those that are required to be furnished both by group health plans and health insurance issuers offering group or individual health insurance coverage pursuant to sections 601 through 608 of ERISA, section 4980B of the Code, and sections 2201 through 2208 of the PHS Act, as well as those under Part 7 of Title 1 of ERISA, subchapter B of chapter 100 of the Code, and Part D of title XXVII of the PHS Act. The Department proposes a broad definition of covered documents that would apply to any document or information that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of ERISA. The Department believes this broad definition will maximize plan sponsors' ability to utilize this proposed new safe harbor, and enable plan participants and beneficiaries to receive various notices and disclosures electronically. While some covered documents under this proposed rule are also required to be furnished by health insurance issuers, the proposed safe harbor is intended to provide another pathway for administrators of group health plans, as defined under section 733(a)(1) of ERISA, to satisfy their disclosure responsibility. However, the Department understands that group health plan administrators often contract with health insurance issuers to provide disclosures required under ERISA. Accordingly, if a health insurance issuer and a group health plan sponsor enter into a written agreement under which the issuer agrees to provide the information required under ERISA, the issuer may also utilize the safe harbor under this proposal.

Under ERISA, some documents must always be furnished and others only upon request by an eligible person.[42] In the 2020 safe harbor, the Department exempted from the scope of covered documents any document or information that must be furnished only upon request. In that rule, the Department clarified that such an exception does not apply to documents for which the plan administrator has an affirmative obligation to furnish but that are also, for various reasons, requested by covered individuals, and therefore, such documents are included as covered documents.[43] The Department is not proposing a similar exemption from the scope of covered documents for documents or information that must be furnished only upon request under proposed 29 CFR 2520.104b–32(c) with respect to group health plans. In other words, under this proposed rule, the electronic disclosure safe harbor would be available for documents that must be furnished only upon request. The Department is proposing to make the electronic delivery safe harbor available both for documents for which the plan administrator has an affirmative obligation to furnish, as well as for documents that must be furnished only upon request, to allow plan administrators to rely on this safe harbor uniformly with regard to covered documents. Furthermore, as discussed in more detail below, while the 2020 safe harbor provides that, notwithstanding any other provision of the 2020 safe harbor, a pension plan

[42] *See, e.g.,* ERISA section 104(b)(4) for the general requirement that upon written request of any participant or beneficiary, plan administrators must furnish plan documents including the latest updated SPD, latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. *See also* ERISA section 101(k) with respect to multiemployer plan information provided to participants and beneficiaries upon written request.

[43] 85 FR 31884, 31890.

administrator may furnish a covered document to a covered individual's email address, provided certain criteria are satisfied, the Department is not including a similar alternative method of disclosure through email system in this proposed rule, primarily due to privacy concerns. Given this limitation, the Departments are proposing to otherwise enhance group health plan administrators' flexibility to utilize the proposed safe harbor by extending it to documents that must be furnished only upon request, in contrast with the 2020 safe harbor. Also, the Department is of the view that the two safeguards discussed in Section II.F of this preamble sufficiently protect participants and beneficiaries who prefer paper copies. The Department requests comment on this proposal.

D. Notice of Internet Availability

Under 29 CFR 2520.104b–31(d)(1), plan administrators for pension benefit plans are required to furnish to each covered individual a NOIA for each covered document in accordance with the requirements of 29 CFR 2520.104b–31(d). This NOIA must be furnished at the time the covered document is made available on the internet website described in 29 CFR 2520.104b–31(e). However, if an administrator furnishes a combined NOIA for more than one covered document, the requirements of 29 CFR 2520.104b–31(d)(2) are treated as satisfied if the NOIA is furnished each plan year, and, if the combined NOIA was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished.

Consistent with the provisions of 29 CFR 2520.104b–31(d)(1) and (2) for pension benefit plans, this proposed rule would add 29 CFR 2520.104b–32(d)(1) and (2), which would provide requirements similar to those applicable for notices of internet availability with respect to pension benefit plans. Proposed 29 CFR 2520.104b–32(d)(1) provides that plan administrators for group health plans are required to furnish to each covered individual a NOIA for each covered document in accordance with the requirements of 29 CFR 2520.104b–32. Proposed 29 CFR 2520.104b–32(d)(2)(i) provides that this NOIA must be furnished at the time the covered document is made available on the internet website described in proposed 29 CFR 2520.104b–32(e). However, if an administrator furnishes a combined NOIA for more than one covered document, the requirements of this proposed paragraph (d)(2) are treated as satisfied if the NOIA is furnished each plan year, and, if the combined NOIA was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished.

The Department also proposes to add 29 CFR 2520.104b–32(d)(2)(ii), providing that for covered documents described in proposed paragraph (c) and that a group health plan is only required to furnish upon request, a NOIA must be provided following a request by a covered individual for such covered document at the time such covered document has been made available on the website described in proposed paragraph (e). As discussed earlier in this preamble, the provision under 29 CFR 2520.104b–31(c)(1) detailing covered documents applicable to pension benefit plans contains an exception for documents or information that must be furnished only upon request from the definition of covered documents. Proposed 29 CFR 2520.104b–32(c) would not include a similar exemption with respect to group health plans. Rather, for group health plans, covered documents would include any document or information that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act. Accordingly, proposed paragraph (d)(2)(ii) clarifies applicable timing requirements with respect to notices of internet availability for documents or information that a group health plan is only required to furnish upon request.

Further, a covered document must be made available on the website no later than the date on which the covered document otherwise must be furnished in accordance with the applicable section of ERISA or regulation thereunder. An administrator who chooses to rely on the proposed electronic disclosure safe harbor would continue to be subject to the content, timing, and other provisions that apply to any particular disclosure. If an administrator chooses to furnish a combined NOIA under paragraph (i) once a year doing so will not change the date on which the covered documents must be made available on the website. Each covered document contained in the combined NOIA must be made available on the website no later than the date it must be furnished to participants and beneficiaries under ERISA. The Department requests comment on this proposal.

Consistent with the provisions at 29 CFR 2520.104b–31(d)(3)(i)(A) through (H) for pension benefit plans, the Department proposes to add similar requirements at 29 CFR 2520.104b–32(d)(3)(i)(A) through (H) to reflect the proposed extension of the documents covered by the electronic disclosure safe harbor to group health plans. Specifically, the Department proposes to add 29 CFR 2520.104b–32(d)(3)(i)(A), which would require that group health plans include in their notices of internet availability a prominent statement—for example as a title, legend, or subject line—that reads: ''Disclosure About Your Health Plan.''

The Department also proposes to add 29 CFR 2520.104b–32(d)(3)(i)(B), which would require group health plans to include a statement that reads, ''Important information about your health plan is now available. Please review this information.''

Further, the Department proposes adding 29 CFR 2520.104b–32(d)(3)(i)(C), which would require the NOIA to include an identification of the covered document by name (for example, a statement that reads: ''your HIPAA Notice of Special Enrollment Rights is now available'') and a brief description of the covered document if identification only by name would not reasonably convey the nature of the covered document.

The Department also proposes to add further content requirements for the NOIA at 29 CFR 2520.104b–32(d)(3)(i)(D) through (H). Specifically, the Department proposes to require that the NOIA contain the internet website address, or a hyperlink to such address, where the covered document is available. The website address or hyperlink must be sufficiently specific to provide ready access to the covered document and would satisfy this standard if it leads the covered individual either directly to the covered document or to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document. The Department also proposes to require that the NOIA contain a statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right; a statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right; a cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document; and a telephone number to contact the administrator or other designated representative of the plan.

The Department also proposes to provide at 29 CFR 2520.104b–

32(d)(3)(ii) that a NOIA furnished pursuant to proposed 29 CFR 2520.104b–32 may contain a statement as to whether action by the covered individual is invited or required in response to the covered document and how to take such action, or that no action is required, provided that such statement is not inaccurate or misleading.

The Department proposes to add requirements for the form and manner of furnishing the NOIA at 29 CFR 2520.104b–32(d)(4)(i) through (iv). Specifically, the notice must: be furnished electronically to the address or internet-connected mobile-computing-device (*e.g.,* ''smartphone'') number referred to in paragraph (b) of the proposal; contain only the content specified in paragraph (d)(3) of the proposal, except that the administrator may include pictures, logos, or similar design elements, so long as the design is not inaccurate or misleading and the required content is clear; be furnished separately from any other documents or disclosures furnished to covered individuals, except as permitted under paragraph (i) of the proposal (which addresses consolidation of certain notices of internet availability); and be written in a manner calculated to be understood by the average plan participant. The Department solicits comments on all aspects of this proposal.

E. Standards for Internet Website

At 29 CFR 2520.104b–31(e)(1), the Department sets forth the general requirement that pension plan administrators must ensure the existence of an internet website at which covered individuals are able to access covered documents. The Department acknowledged in the preamble to the 2020 safe harbor that with respect to pension benefit plans, some or all the responsibilities associated with the website may be delegated to plan service or investment providers or other third parties, as frequently occurs now for other aspects of plan administration.[44]

Similar to the 2020 safe harbor, 29 CFR 2520.104b–32(e)(1) of this proposed rule sets forth a general requirement that group health plan administrators must ensure the existence of an internet website at which a covered individual is able to access covered documents. The plan administrator would be responsible for ensuring the establishment and maintenance of the website. As in the pension benefit plan context, the Department is aware that group health plan administrators may rely on plan service providers or other third parties for this purpose. This proposed rule does not preclude the assignment of website-related activities to parties other than the administrator, subject to the group health plan administrator's compliance with paragraph (j) of this proposal, ''Reasonable procedures for compliance,'' discussed below, and the administrator's general obligation as a plan fiduciary under ERISA section 404 to prudently select and monitor such parties.

Besides the NOIA, the 2020 safe harbor additionally provides that, notwithstanding any other provision of the 2020 safe harbor, a pension plan administrator may satisfy ERISA's general furnishing obligations in 29 CFR 2520.104b–1(b)(1) by using an email address to furnish a covered document to a covered individual, provided that the requirements of 29 CFR 2520.104b–31(k)(1) through (4) are satisfied.[45] This proposed rule does not propose to permit a similar alternative method for disclosure of covered documents to covered individuals through email systems. Many of the disclosures required by ERISA for group health plans include information of a sensitive nature, including protected health information (PHI) protected by the HIPAA privacy rule.[46] The Department recognizes that email is not always the most secure means to deliver such information and therefore is limiting this alternative method to pension benefit plans. For example, the Department intends to avoid a circumstance where PHI is transmitted to an employee via their company email address, where the content of such email is potentially monitored by the employer.[47] The Department solicits comments on whether group health plans should be permitted to utilize this alternative method for disclosure, including how they would expect to utilize this alternative disclosure option to provide covered documents to covered individuals. Therefore, under this proposed rule, a group health plan administrator must establish an internet website at which covered individuals would be able to access covered documents, and an alternative method for disclosure of covered documents through email systems would not be available.

The plan administrator also would be required to take measures reasonably calculated to ensure that the specific standards for the internet website listed in paragraph (e)(2) have been satisfied. First, paragraph (e)(2)(i) would require that the covered document be available on the website no later than the date on which the covered document must be furnished under ERISA. As discussed above, the proposed safe harbor would not alter the substantive or timing requirements for covered documents. Even if an administrator chooses to consolidate a NOIA for certain disclosures and furnish a combined notice pursuant to paragraph (i) of the proposal, a covered document (as opposed to the notice for such document) would be required to be made available on the website on a timely basis consistent with when it would otherwise be required to be furnished under the relevant statute or regulation. Under proposed paragraph (e)(2)(ii), the covered document must also remain available on the website at least until the date that is one year after the date the covered document is made available on the website or, if later, until it is superseded by a subsequent version of the covered document. However, under this proposed rule, group health plan administrators' responsibilities with respect to retaining plan records under existing law continue to apply. For example, ERISA sections 107 (retention of records) and 209 (recordkeeping and reporting requirements) separately specify retention periods.

Paragraphs (e)(2)(iii) through (vi) of this proposed rule address the presentation of covered documents on the website. Paragraph (e)(2)(iii) would require that a covered document be presented on the website in a manner calculated to be understood by the average plan participant. This standard is identical to the readability standard for the NOIA in paragraph (d)(4)(iv), which is discussed above. Next, the covered document would be required, pursuant to paragraph (e)(2)(iv), to be presented on the website in a widely available format or formats that are suitable to be both read online and printed clearly on paper. An administrator may be able to comply with this requirement, for example, by posting the document in a portable document format (PDF) or similar widely available format on the website. The content of the covered document also would be required to be searchable electronically by numbers, letters, or words, to satisfy paragraph (e)(2)(v).

[44] 85 FR 31884, 31895.

[45] *See* 29 CFR 2520.104b–31(k).

[46] 45 CFR part 164.

[47] By contrast, if pension benefit information is transmitted via a company email, there is less concern because the employer would already be aware of the employee's deferral amount or their 401(k) balance, for example.

Under proposed paragraph (e)(2)(vi), the covered document would be required to be presented on the website in a widely available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) (requiring a format that can be read online and printed clearly on paper). This requirement is intended to enable covered individuals and plans to keep a copy of the covered document, for example, by saving it to a file in electronic format, on a personal computer, or as a printed document.

The Department also proposes to provide at paragraph (e)(3) that the administrator must take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual.

Finally, the Department proposes to define ''website'' at paragraph (e)(4) as an internet website, or other internet or electronic-based information repository, such as a mobile application, to which covered individuals have been provided reasonable access. As acknowledged above, many of the disclosures required by ERISA for group health plans include information of a sensitive nature, including PHI protected by the HIPAA privacy rule.[48] The Department understands that plan administrators may need to take steps to ensure that this information is properly protected, which may include utilizing a manner of disclosure other than a publicly available internet website. Provided such alternate means fall within the definition of website proposed here, such alternate means could still fulfill the role contemplated for an internet website in proposed 29 CFR 2520.104b-32(e). However, group health plan administrators should ensure that such internet website is accessible to covered individuals outside of the workplace to ensure compliance with the reasonable access standard.

The Department requests comments on all aspects of this proposal.

F. Right to Copies of Paper Documents Without Charge

As explained in the 2020 safe harbor, the Department is of the view that it is essential that any enhanced use of electronic disclosure permitted under ERISA respects the preferences of covered individuals who want to receive paper copies of covered documents. To that end, the 2020 safe harbor and this proposed rule contain two safeguards, included both under 29 CFR 2520.104b–31(f) and proposed 29 CFR 2520.104b–32(f) for these covered individuals.

The first proposed safeguard under 29 CFR 2520.104b–32(f)(1) provides that on request from a covered individual, the plan administrator must promptly furnish to such individual, free of charge, a paper copy of a covered document. Commenters in response to the 2020 safe harbor raised some concerns about repeated requests for the same version of the covered document.[49] Accordingly, the Department added a clarification to 29 CFR 2520.104b–31(f)(1) stating that only one paper copy of any specific covered document must be provided free of charge.

Under this proposed rule, the Department proposes to add a provision at 29 CFR 2520.104b–32(f)(1) providing that for group health plans, the administrator may not charge for paper copies. The Department proposes to require group health plan administrators to furnish additional paper copies, free of charge, to a covered individual. Many stakeholders have requested the Department to make clear that participants and beneficiaries covered under group health plans are able to receive paper copies as needed without being charged for the copies. This proposal also reflects the Department's view that, as part of any increase in electronic disclosure permitted under ERISA, it is essential to respect the wishes of participants and beneficiaries who prefer to receive covered documents on paper, mailed or delivered to them in accordance with 2520.104b–1(b). Furthermore, the 2002 safe harbor allows participants, beneficiaries, and other individuals to request paper copies, free of charge, and the Department is unaware of abusive practices with respect to such requests. As explained in the 2020 safe harbor,[50] the Department reiterates that this special rule allows covered individuals to request more than one covered document at the same time free of charge and the proposed changes would not alter this.

The second safeguard to ensure participants and beneficiaries are able to receive paper copies of covered documents upon request is set forth in proposed 29 CFR 2520.104b–32(f)(2). This provision provides that covered individuals must have the right, free of charge, to globally opt out of electronic delivery and receive only paper versions of covered documents. Upon request from a covered individual, the administrator must promptly comply with such an election.

The Department also proposes to require at 29 CFR 2520.104b–32(f)(3) that the administrator establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2); these procedures would not be reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election.

Finally, the Department proposes to provide at 29 CFR 2520.104b–32(f)(4) that the system for furnishing a NOIA must be designed to alert the administrator of a covered individual's invalid or inoperable electronic address. Furthermore, if the administrator is alerted that a covered individual's electronic address has become invalid or inoperable, such as if a NOIA sent to that address is returned as undeliverable, the administrator must promptly take reasonable steps to cure the problem (for example, by furnishing a NOIA to a valid and operable secondary electronic address that had been provided by the covered individual, if available, or obtaining a new valid and operable electronic address for the covered individual) or treat the covered individual as if he or she made an election under proposed paragraph (f)(2). If the covered individual is treated as if he or she made an election under paragraph (f)(2), the administrator must furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered NOIA. The Department solicits comments on all aspects of this proposal.

G. Initial Notification

Similar to the provisions at 29 CFR 2520.104b–31(g) for pension benefit plans, these rules propose to add a provision at 29 CFR 2520.104b–32(g) that would apply similar requirements with respect to group health plans. Under these proposed provisions, the administrator for a group health plan is required to furnish to each individual, prior to the administrator's reliance on the electronic delivery safe harbor, a notification that covered documents will be furnished electronically to an electronic address; identification of the electronic address that will be used for the individual; any instructions necessary to access the covered documents; a cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of

[48] 45 CFR part 164.

[49] 85 FR 31884, 31898.

[50] *Id.*

the covered document; a statement of the right to request and obtain a paper version of a covered document, free of charge, and an explanation of how to exercise this right; and a statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right. In addition, such notification must be written in a manner calculated to be understood by the average plan participant. Proposed 29 CFR 2520.104b–32(g) also provides that with respect to a group health plan, the administrator is not required to furnish a paper copy of an initial notification of default electronic delivery for covered individuals who, prior to the first day of the first calendar year following date of publication of the final rule, have been receiving documents and information under Title I of ERISA electronically pursuant to 29 CFR 2520.104b–1(c). Accordingly, with respect to group health plans only, a plan administrator may choose to rely on the 2002 safe harbor to furnish the initial notice electronically to any participant or beneficiary that would be a covered individual under the electronic disclosure safe harbor as proposed in this proposed rule.

As explained in the preamble to the 2020 safe harbor, with respect to pension benefit plans, for transition purposes, an administrator who wants to rely on the electronic disclosure safe harbor is required to send the initial notification on paper to existing employees before the administrator could rely on the safe harbor for such existing employees. This is the case even if that employee previously received electronic disclosures under the safe harbor at 29 CFR 2520.104b-1(c), for example, because he previously provided affirmative consent to receive disclosures electronically. With respect to pension benefit plans, the Department considered carving out an exception to the requirement that the initial notice must be furnished on paper for individuals who already receive disclosures electronically under the 2002 safe harbor. In finalizing the 2020 safe harbor, the Department declined to do so, citing the importance for all participants and beneficiaries to be notified, on paper, that the administrator will be adopting a new method of electronic delivery, including how covered documents will be furnished, and their rights under the new electronic delivery framework. However, subsequent to the finalization of the 2020 safe harbor, the Department issued EBSA Disaster Relief Notice 2020–01, which allowed notices, including notices of the adoption of a new method of electronic delivery, to be furnished electronically to plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites during the Covid–19 National Emergency.[51] The Department is unaware of any issues that arose from allowing notice of the adoption of a new method of electronic delivery to be delivered electronically. In re-evaluating this issue in the group health plan context, the Department is of the view that participants and beneficiaries who already receive electronic disclosure pursuant to the 2002 safe harbor are by now highly accustomed to receiving documents electronically and requiring the administrator to transmit the initial notification in paper form would not necessarily ensure receipt any more so than electronic delivery. The Department solicits comment on this proposal, including whether, in the group health plan context, furnishing the initial notification electronically, rather than on paper, to covered individuals who, prior to the first day of the first calendar year following the date of publication of the final, had been receiving documents and information pursuant to the 2002 safe harbor is sufficient to ensure employees understand their rights with respect to electronic delivery.

H. Special Rule for Severance From Employment

Under 29 CFR 2520.104b–31(h), a plan administrator is required to take measures reasonably calculated to ensure the continued accuracy of the electronic address following a severance from employment, or to obtain a new address that enables receipt of covered documents following the severance. The Department intends to ensure a seamless transition for the dissemination of group health plan information when an employee leaves employment, and this special rule focuses on circumstances when there is a heightened concern about the accuracy of electronic contact information in connection with an employee's severance from employment.

Consistent with the provisions at 29 CFR 2520.104b–31(h) for pension benefit plans, the Department proposes to add 29 CFR 2520.104b–32(h), which provides that, at the time a covered individual who is an employee, and for whom an electronic address assigned by an employer pursuant to paragraph (b) of this section is used to furnish covered documents, severs from employment with the employer, the administrator of a group health plan must take measures reasonably calculated to ensure the continued accuracy and availability of such electronic address or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment. The Department solicits comment on this proposal.

I. Special Rule for Annual Combined Notices of Internet Availability

The Department proposes provisions similar to those that apply to pension benefit plans in the 2020 safe harbor at proposed 29 CFR 2520.104b–32(i)(1) through (4). Consistent with these provisions, the Department proposes that a plan administrator may furnish to participants and beneficiaries one annual NOIA that incorporates or combines the content required by 29 CFR 2520.104b–32(d)(3) with respect to one or more of the following: (1) a summary plan description, as required pursuant to section 104(b) of the Act; (2) any covered document or information that must be furnished annually, rather than upon the occurrence of a particular event, and does not require action by a covered individual by a particular deadline; (3) any other covered document if authorized in writing by the Secretary of Labor, by regulation or otherwise, in compliance with section 110 of the Act; and (4) any applicable notice required by the Internal Revenue Code if authorized in writing by the Secretary of the Treasury. These annual combined NOIA would be required to fulfill the form and manner requirements set forth under proposed 29 CFR 2520.104b–32(d)(4)(i), (ii), and (iv).

The Department also proposes to add 29 CFR 2520.104b–32(i)(5), which provides that, with respect to group health plans, any covered document that must be furnished with annual enrollment materials may be identified in a combined NOIA, if the NOIA is provided at the time of annual enrollment. Additionally, any covered document that must be included with materials that describe the plan benefits, such as the disclosure of reasonable alternative for a health-contingent

[51] *EBSA Disaster Relief Notice 2020–01* (Apr. 28, 2020), *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01.*

wellness program,[52] may be identified in a combined NOIA. The Department requests comment on this proposal, including whether additional clarifications are necessary for the timing of the combined notice to ensure it is workable with the various timing requirements of the group health plan disclosures required under ERISA.

J. Reasonable Procedures for Compliance

Similar to the provisions that apply at 29 CFR 2520.104b–31(j) for pension benefit plans, the Department proposes 29 CFR 2520.104b–32(j), which provides that, in the event that the covered documents described in proposed paragraph (b) are temporarily unavailable for a reasonable period of time in the manner required by this section due to technical maintenance or unforeseeable events or circumstances beyond the control of the administrator of a group health plan, the conditions of this proposal are satisfied if the administrator meets certain conditions. Specifically, the conditions of this proposal are satisfied if the administrator: (1) has reasonable procedures in place to ensure that the covered documents are available in the manner required by this section; and (2) takes prompt action to ensure that the covered documents become available in the manner required by this section as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the covered documents are temporarily unavailable in the manner required by this section. The Department recognizes the practical reality of temporary technical disruptions while at the same time including sufficiently rigorous standards to make sure that, as a general matter, important ERISA information is available to participants and beneficiaries when they need it. The Department solicits comment on this proposal.

K. Provisions of Other Laws

The Department proposes to add 29 CFR 2520.104b–32(k), which provides that compliance with the disclosure requirements of 29 CFR 2520.104b–32 is not determinative of compliance with any other provision of applicable Federal or State law. The Department furthermore proposes to include an example at paragraph (k) providing that a group health plan is a covered entity as defined under HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act,[53] and the related regulations promulgated by HHS and, as such, is required to comply with HIPAA's provisions regarding the confidentiality and privacy of PHI. This provision is meant to remind group health plans of the requirement to comply with other applicable Federal and State laws, including those protecting participants' and beneficiaries' privacy.

L. Amendments to the Claims Regulation

In order to align the claims regulation with this proposed new standard, the Department proposes to amend 29 CFR 2560.503–1(g)(1), which provides for the manner and content of notification of any adverse benefit determination, and 29 CFR 2560.503–1(j), which provides for the manner and content of notification of a plan's benefit determination on review. Each provision currently specifies that any electronic notification, with respect to an adverse benefit determination or benefit determination on review, respectively, ''shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans).'' The Department proposes to add a reference to 29 CFR 2520.104b–32 followed by the parenthetical phrase (for group health plans) in paragraphs (g)(1) and (j) so that the provisions would read as ''shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans) or 29 CFR 2520.104b–32 (for group health plans). The Department solicits comments on this proposal.

M. Applicability

The 2020 safe harbor became effective on July 27, 2020, pursuant to 29 CFR 2520.104b–31(l)(1). As was the case for establishing a safe harbor for pension benefit plans under the 2020 safe harbor, in establishing an applicability date with respect to group health plans, the Department wants to make the safe harbor in proposed 29 CFR 2520.104b–32 available to administrators as soon as possible. Because it is a safe harbor, rather than a required method for disclosure, administrators are not required to come into compliance with the conditions by the applicability date—administrators are free to begin taking advantage of the safe harbor at any time on or after the applicability date. Thus, the Department proposes that the proposed rule is applicable for employee benefit plans on the first day of the first calendar year following date of publication of the final rule. The Department requests comments on the extent to which this applicability date should be sooner, given that the provision is optional, or later, if necessary to safeguard plan participants and beneficiaries from potential harm if administrators rely on the safe harbor too soon.

III. Regulatory Impact Analysis

A. Summary

The Department has examined the impacts of this proposed rule as required by Executive Order 12866,[54] Executive Order 13563,[55] Executive Order 14192,[56] the Paperwork Reduction Act of 1995,[57] the Regulatory Flexibility Act,[58] section 202 of the Unfunded Mandates Reform Act of 1995,[59] and Executive Order 13132.[60]

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant'');

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

[52] 26 CFR 54.9802–1(f)(3)(v) and (f)(4)(v), 29 CFR 2590.702(f)(3)(v) and (f)(4)(v), and 45 CFR 146.121(f)(3)(v) and (f)(4)(v).

[53] Public Law 111–5 (Apr. 27, 2009).

[54] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[55] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[56] 90 FR 9065 (Jan. 31, 2025).

[57] 44 U.S.C. 3506(c)(2)(A) (1995).

[58] 5 U.S.C. 601 *et seq.* (1980).

[59] 2 U.S.C. 1501 *et seq.* (1995).

[60] Federalism, 64 FR 43255 (Aug. 4, 1999).

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

This proposal seeks to build upon the existing provisions of the 2002 safe harbor. Based on the Department's estimates, OMB's OIRA has determined this rulemaking is economically significant per section 3(f)(1) as it is likely to have an impact of $100 million or more in any one year. The Department has provided an assessment of the potential costs, benefits, and transfers, associated with this proposed rule, and OMB has reviewed this proposed rule.

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action. This proposal, if finalized as proposed, would be considered de-regulatory under Executive Order 14192.

C. Introduction and Need for Regulation

Technology and communication practices have changed substantially since the Department first published the 2002 electronic disclosure safe harbor. While the Department expanded the use of electronic disclosures for pension benefit plans in 2020, the rules related to electronic disclosure for group health plans have remained largely unchanged, despite an increasing share of the public relying on electronic communication and internet-based platforms as their primary means of receiving information.

Approximately 96 percent of U.S. adults use the internet in 2025,[61] making electronic document delivery a convenient and accessible means for participants and beneficiaries to receive group health plan information. Electronic delivery allows participants and beneficiaries to receive, review, and store documents electronically, providing access to their information regardless of their physical location.

As technology has become more central to everyday life, there has been a growing need for group health plan disclosure practices to reflect modern communication methods. This proposed rule responds to this need by extending the 2020 electronic safe harbor to group health plan disclosures.

D. Baseline

For purposes of the regulatory impact analysis, the Department considers the 2002 safe harbor as the baseline against which all incremental effects of the proposed rule are measured.

1. 2002 Safe Harbor

Under the 2002 safe harbor, both pension and welfare plans may furnish required disclosures electronically to participants who either (1) have work-related access to electronic systems (commonly referred to as being ''wired at work''), or (2) provide affirmative consent to receive documents electronically. Participants may receive these disclosures through a website or a participant portal. The 2002 safe harbor established the current conditions under which plans distribute required notices and communications. This means that all benefits, costs, and transfers presented in the analysis reflect changes relative to the disclosure practices, administrative procedures, and participant communication methods that exist today under the 2002 framework.

2. 2020 Safe Harbor for Pension Benefit Plans

In 2020, the Department adopted another electronic disclosure safe harbor for pension plans, applicable when participants provide their employer, plan sponsor, or plan administrator with an electronic address (*e.g.,* an email address or smartphone number). Unlike the 2002 framework, the 2020 safe harbor is structured around default electronic delivery, while preserving participant rights to receive information on paper.

To utilize the 2020 safe harbor, plan administrators must satisfy several requirements. These include furnishing a NOIA for each covered document, maintaining an internet website through which participants and beneficiaries can access disclosures, and providing paper copies of disclosures to participants and beneficiaries, free of charge, upon request. Administrators must also establish and maintain reasonable procedures for governing the handling of participant elections and requests, including opt-out elections.

3. Current Regulatory Action

Largely mirroring the 2020 safe harbor, this proposed rule provides group health plan administrators with a new safe harbor to rely on for disclosure through electronic media. The proposed rule defines covered documents for group health plans as any document or information that the administrator is required to furnish to participants under Title I of ERISA. Under the proposed rule, documents that must be furnished with annual enrollment materials or that describe plan benefits may be treated as covered documents and furnished electronically. In addition, a dependent child who has attained age 18 and provided an electronic address may be treated as a covered individual for purposes of receiving electronic disclosures. Key requirements of the proposed safe harbor impacting the costs and benefits are described below.

a. Notice of internet Availability and Posting Documents Online

The proposed rule would require group health plans to furnish covered documents by posting the documents on an internet website and providing covered individuals with an NOIA. The notice must be furnished electronically to the electronic address provided by the covered individual, must be separate from other documents (subject to limited exceptions), and must be written in a manner calculated to be understood by the average plan participant. The notice must be:

[1] Furnished electronically to the electronic address provided by the covered individual;

[2] Separate from other documents, though subject to limited expectations; and

[3] Be written in a manner calculated to be understood by the average plan participant.

While the notice may include logos, pictures, or similar design elements, the design may not be inaccurate or misleading and must present the required content clearly.

The proposed rule also clarifies standards for the internet website on which covered documents are made available. The plan administrator must ensure that a website exists where covered individuals are able to access these documents, and that the documents are available on the website no later than the date on which they are required to be furnished under ERISA. The proposed rule recognizes existing

[61] Pew Research Center, *internet, Broadband Fact Sheet* (Nov. 20, 2025), *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/.*

administrative arrangements by permitting the website to be established and maintained by the issuer of group health insurance coverage in the case of insured group health plans, or by a third-party administrator or other service provider in the case of self-insured group health plans.

b. Notice of Default Electronic Delivery and Right To Opt Out

Consistent with the 2020 safe harbor, the proposed rule establishes requirements for a covered individuals' right to receive paper copies and to opt out of electronic delivery. Upon request, a covered individual must be furnished, free of charge, with at least one paper copy of any covered document. Covered individuals may also globally opt out of electronic delivery and receive only paper versions of covered documents. Group health plan procedures governing these requests or elections must be reasonable and may not unduly inhibit or delay the exercise of these rights.

c. Procedures for Electronic Address Are Invalid or Inoperable

Finally, the proposed rule establishes requirements for situations in which a covered individual's electronic address becomes invalid or inoperable. If an NOIA is returned as undeliverable or the administrator otherwise becomes aware that an electronic address is invalid, the administrator must take reasonable steps to cure the problem, such as using a secondary electronic address or obtaining a new valid address. If the issue cannot be resolved, the covered individual must be treated as having opted out of electronic delivery.

d. Summary of Proposed Rule

Overall, the purpose of this proposed rule is to ensure that participants in group health plans receive disclosures in a manner that is accessible, timely, and aligned with modern communication practices. By updating the electronic safe harbor, the Department aims to reduce unnecessary administrative burdens while improving participants' ability to understand and act on important plan information. This proposal reflects the Department's broader commitment to strengthening transparency, promoting informed decision-making, and ensuring that disclosure requirements evolve with technological change.

E. Summary of Impacts

In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Department's assessment of the benefits, costs, and transfers associated with these regulatory actions. The Department is unable to quantify all benefits, costs, and transfers of the proposed rule, but have sought, where possible, to describe these non-quantified impacts.

The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of the proposed rule. The Department's estimates of benefits, costs, and transfers are explained in detail in sections III.H and III.I of this analysis.

TABLE 1—ACCOUNTING STATEMENT

Benefits:

Non-Quantified Benefits for Participants:
- Greater access to plan information.
- Improved understanding of plan information.
- Better value from informed decision-making.
- Easier management of plan documents.
- Enhanced quality of disclosures.

Non-Quantified Benefits for Group Health Plans:
- Easier updates and version control of plan documents.

Costs:

	Estimate	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($million/year)	−$391.99	2026	7	2026–2035
	−392.44	2026	3	2026–2035

The estimated costs reflect multiple components, including the costs associated with rule familiarization and preparing required notices, as well as the cost savings resulting from reduced mailing costs associated with paper disclosures.

Quantified Costs:
- Costs of approximately $8.1 million in the first year for group health plans associated with rule familiarization.
- Costs of approximately $8.3 million in the first year for group health plans for preparing the NOIA and Notice of Default Electronic Delivery and Opt-out Notification.
- Costs of approximately $13.6 million in the first year and $6.5 million in subsequent years for group health plans for mailing the Notice of Default Electronic Delivery and Opt-out Notification.

Quantified Cost Savings:
- Annual cost savings of $402 million (nearly a 70 percent decrease) for group health plans resulting from reduced materials and mailing costs associated with paper disclosures.

Transfers:

Non-Quantified:

- Transfers from plans to participants in the form of lower premiums or reduced administrative charges.

Perpetual Time Horizon Costs:
- Annualized Cost (in 2024 dollars): −$381.6 million/year.

F. Request for Comments

The Department invites comments addressing its estimates and underlying assumptions of the benefits, costs, and transfers associated with the proposed rulemaking, as well as any quantifiable data that would support or contradict any aspect of its analysis. Throughout the document, the Department has requested comments on specific assumptions in their analysis. In particular, the Department requests comments on the following questions:

- What percentage of plan participants are currently receiving plan documents and notices electronically?
- How could the Department estimate the change in the percentage of plan participants receiving plan documents and notices as a result of the proposed rule?
- How prevalent is the use of service providers for the purposes of rule review, compliance, and preparation of legal notices and explanations?
- Are certain types of participants less likely to use electronic disclosures?
- What data or estimates comparing fraud or loss of PII/PHI by delivery method are available (*i.e.,* mailed vs electronic materials)?

G. Affected Entities

Table 2 summarizes the number of ERISA-covered group health plans, issuers, and third-party administrators (TPAs) that would be affected by the proposed rule. These estimates and their sources are discussed in greater detail later below.

TABLE 2—AFFECTED ENTITIES

	Total
ERISA-Covered Group Health Plans	2,765,373
TPAs	205
Issuers in the group market	373
Issuers/state combinations in the group market	811

1. Group Health Plans, Participants, and Beneficiaries

The proposed rule would affect ERISA-covered group health plans. The Department estimates there are 2,765,373 ERISA-covered group health plans [62] with 134.7 million participants and beneficiaries.[63]

2. Issuers and TPAs

The proposed rule would also affect issuers and TPAs that provide services to group health plans, including delivering required plan documents. Costs incurred by issuers and TPAs would likely be passed on to health plans. The Department estimates there are 205 non-issuer TPAs and 373 health insurance companies in the group market (811 issuers when considering the total number of subsidiaries licensed to sell health insurance in a specific State).[64]

H. Benefits

The Department expects that the proposed rule, if finalized, will result in meaningful benefits for both group health plans and participants. Due to an overall lack of data, this analysis provides, mainly, a qualitative discussion of the potential benefits of the proposed rule. The Department invites comments related to how it might quantify these benefits or data that could assist in the quantification of the potential benefits related to the proposed rule, if finalized.

1. Benefits for Participants

a. Greater Access to Plan Information

The proposed rule's electronic delivery requirements could significantly improve the ability of participants with only access to paper documents to access plan documents in a timely and convenient manner. Under traditional paper-based systems, participants must wait for mail processing, which can introduce delays during periods of high inquiry volume or postal disruptions. Moreover, under such a system, participants only have access to the documents when they are in their physical possession, which can be particularly challenging in the middle of a medical emergency. In contrast, electronic notices and online document access allow participants to view required disclosures at any time, without relying on call centers or physical mail delivery.[65]

Greater availability and accessibility of information may also reduce uncertainty for participants who may need to clarify plan features, eligibility rules, or coverage limitations. Faster access to plan and coverage information could enable participants and beneficiaries to resolve coverage questions independently, which may reduce the need for customer service calls, saving all parties time. Lower call volumes could, in turn, shorten the average wait times for those who may still require assistance of some type, creating efficiency gains for both group health plans and participants.

b. Improved Understanding of Plan Information

By making disclosures more readily available and accessible, the proposed rule may also improve participants' understanding of plan information, resulting in better decision-making.[66] Prior research has found that electronic disclosures are associated with improved comprehension of disclosures, with some studies suggesting that electronic disclosures are more likely to result in transparency than paper-based disclosures.[67] For

[62] Based on the 2024 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) and the 2022 County Business Patterns from the Census Bureau.

[63] Employee Benefits Security Administration, *Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2024 Annual Social and Economic Supplement to the Current Population Survey* (Aug. 30, 2025), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2024.pdf.*

[64] A health insurance company is a legal entity with subsidiaries that are each licensed to sell health insurance in one specific State, while an issuer is one of those subsidiaries. Data source: Centers for Medicare and Medicaid Services, *2023 Medical Loss Ratio Data,* (Dec. 16, 2024), *https://www.cms.gov/marketplace/resources/data/medical-loss-ratio-data-systems-resources.* The estimated number of non-issuer TPAs is based on data derived from the 2016 benefit year reinsurance program contributions.

[65] Kenesa Ahmad, *The Top Five Reasons to Favor Electronic Disclosure,* American Society of Pension Professionals & Actuaries (Nov. 2, 2017), *https://www.asppa-net.org/news/2017/11/top-five-reasons-favor-electronic-disclosure//.*

[66] Samantha J. Prince & Alyssa Boob, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (Apr. 22, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0007.*

[67] Jill M. Fridley, *Electronic Participant Fee Disclosures: A Review of Electronic Disclosures as a Cost-Efficient Delivery Alternative, Journal of Financial Service Professionals,* 67, no. 3 (2013); Alcaide Muñoz, Laura, Manuel Pedro Rodríguez Bolívar, & Antonio Manuel López Hernández, *Transparency in Governments: A Meta-Analytic Review of Incentives for Digital Versus Hard-Copy Public Financial Disclosures, The American Review*

example, long and complex disclosures can be overwhelming and discourage participants and beneficiaries from fully reading and understanding the plan disclosures.[68] However, electronic disclosures can direct participants and beneficiaries to online tools and other resources that help them better understand their group health benefits.[69] For example, electronic document tools, including hyperlinks, indexing, bookmarks, and the ''search'' function, may help participants locate specific information that directly addresses their issues or concerns faster. Such features may be especially useful for participants and beneficiaries with disabilities or other challenges when navigating complex, lengthy documents such as SPDs or notices related to coverage or claims procedures.[70]

Improved decision-making may produce several societal benefits. For example, plan participants may choose in-network providers more consistently, reduce avoidable emergency room visits, or better utilize preventive services. These choices could reduce overall out-of-pocket costs and improve health outcomes for participants and beneficiaries, thus reducing the overall premiums for the group health plan. Ultimately, informed decision-making supports a more efficient benefits system by aligning participant behavior with available plan options and encouraging cost-effective use of resources.[71]

c. Easier Management of Plan Documents

As a result of the proposed rule, participants may find it easier to manage plan documents. Paper documents can be difficult to manage over time, and participants may misplace or discard important disclosures before they need them. Replacing or requesting duplicate or additional copies requires administrative effort on behalf of both the plan and participant and may further delay participant receipt of plan documents and further hinder their understanding of plan terms. Electronic delivery offers a more reliable and more easily accessible alternative. Participants can save disclosures on personal devices, cloud-based storage, secure plan portals, or a combination of these, creating a centralized and organized record of all benefit information.[72] These disclosures can be easily downloaded and printed for future reference,[73] which may be helpful in time-sensitive situations, including medical emergencies.

d. Enhanced Quality of Disclosures

The proposed rule may also result in group health plans improving the clarity and usefulness of disclosures in ways that are not feasible with paper documents. For example, hyperlinks can be incorporated to direct participants to supplementary resources, such as detailed plan descriptions, cost-comparison tools, provider networks, regulatory guidance, or grievance and appeal procedures. These additional materials may help participants better interpret and understand plan terms, evaluate options, and compare benefits across providers or coverage types.

Electronic disclosures could also allow group health plans to integrate interactive tools that could provide tailored information to a participant's particular needs. Examples could include embedded videos explaining plan features, calculators that estimate out-of-pocket costs, glossaries of common terms, and automated translation services for participants with limited English proficiency. Group health plans may also use assistive technologies that support screen readers and magnification tools, improving accessibility for participants with visual impairments. By offering clearer and more navigable content, electronic disclosures may increase participant comprehension, reduce confusion, and foster more confident decision-making.[74]

2. Benefits for Group Health Plans

a. Easier Updates and Version Control of Plan Documents

The proposed rule may make it easier for group health plans to update the required plan documents, maintain version controls, and disseminate materials without relying on physical printing or mailing cycles.[75] When updates are needed, such as changes to coverage terms, provider networks, formularies, or claims procedures, plans can modify and upload revised documents and ensure participants have prompt access to the most current information. This may reduce the likelihood that outdated materials remain in circulation and participants are improperly informed.

More accurate and timely disclosures may also reduce the administrative burden associated with correcting errors, issuing replacement mailings, or responding to participant confusion caused by outdated information. Group health plans may experience fewer disputes or appeals related to misunderstandings because of outdated policies and terms, thereby lowering legal and compliance risks. Overall, electronic delivery would be expected to increase operational efficiency, reduce the risk of noncompliance from outdated documents, and promote more reliable communication between plans and participants.

3. Summary of Benefits

Overall, the proposed rule is expected to provide meaningful benefits to both participants and group health plans by modernizing how required plan information is delivered and accessed. For participants, electronic delivery is expected to improve timely and convenient access to plan documents, reduce reliance on physical mail and call centers, and allow disclosures to be available and easily accessible when needed, including during time-sensitive situations. Improved availability and navigability of plan information may also enhance participants' understanding of plan terms, support more informed decision-making, and reduce uncertainty related to coverage, eligibility, and cost-sharing.

For group health plans, electronic delivery may simplify document management, enable faster updates and version control, reduce administrative

of Public Administration, 47(5) (Feb. 12, 2016), *https://doi.org/10.1177/0275074016629008* (Original work published 2017).

[68] SHRM, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (May 22, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0024.*

[69] SPARK Institute, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (May 21, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0010.*

[70] American Benefits Council, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (May 21, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0009.*

[71] Kenesa Ahmad, *The Top Five Reasons to Favor Electronic Disclosure,* American Society of Pension Professionals & Actuaries (November 2, 2017), *https://www.asppa-net.org/news/2017/11/top-five-reasons-favor-electronic-disclosure//.*

[72] SHRM, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (May 22, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0024.*

[73] SHRM, *Request for Information on SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements* (May 22, 2024), *https://www.regulations.gov/comment/EBSA-2024-0001-0024.*

[74] Kenesa Ahmad, *The Top Five Reasons to Favor Electronic Disclosure,* American Society of Pension Professionals & Actuaries (Nov. 2, 2017), *https://www.asppa-net.org/news/2017/11/top-five-reasons-favor-electronic-disclosure//.*

[75] Computer Plus, *Paper Document vs Electronic Document: Which is Better* (Mar. 1, 2022), *https://computerplusng.com/paper-document-vs-electronic-document-which-is-better/.*

burdens, and improve operational efficiencies.

For both plans and participants, the time-cost savings discussed in section III.I may also result in productivity gains, as plans and participants use time previously spent on paper document management for other more productive tasks. Due to a lack of data, the Department is unable to quantify this benefit. Overall, these benefits could result in more efficient, secure, and accessible delivery of plan information aligned with current communication practices.

I. Costs

This proposed rulemaking extends the Department's 2020 pension electronic disclosure safe harbor to group health plans. This allows plans to furnish covered documents by posting them on an internet website and providing covered individuals with an NOIA, while still allowing covered individuals the option to receive paper disclosures.

The Department expects that the main cost drivers of this proposal are related to interested parties reviewing the proposed rule and understanding its implications for group health plans and their operations and preparing and distributing required notices. The Department further expects the proposed rule will reduce the costs of providing covered disclosures, by allowing plans, issuers and TPAs to utilize electronic disclosures for the vast majority of notices and disclosures, significantly lowering the printing and mailing costs of providing these disclosures in paper format. As Table 11 shows, the Department estimates the proposed rule, if finalized, will save $372 million in the first year and $395 million in subsequent years.

1. Rule Familiarization and Compliance Costs

Due to differences in administrative capacity of group health plans, the Department distinguishes health plans by size for the purposes of estimating the rule familiarization and compliance costs. The largest group health plans are more likely to have in-house legal and compliance staff, and are therefore anticipated to review and assess the proposed rule internally. In contrast, smaller group health plans are more likely to rely on TPAs, issuers, or other service providers for regulatory review and implementation support. Accordingly, the Department assumes that group health plans with 1,000 or more participants and beneficiaries are expected to review the proposed rule themselves. In contrast, smaller group health plans with less than 1,000 participants and beneficiaries are expected to utilize a TPA, issuer, or other service provider to review the proposed rule on the plan's behalf. The Department also assumes that it would take, on average, two hours for a legal professional,[76] at a wage rate of $187.58,[77] to review the rule if finalized. The cost estimates are explained in Table 3.

TABLE 3—RULE FAMILIARIZATION

	Number of entities (A)	Number of hours per entity (B)	Total hour burden (C) = (A × B)	Hourly wage (D)	Cost (E) = (A × B × C)
ERISA-covered Group health plans with 1,000 or more participants and beneficiaries	20,570	2	41,140	$187.58	$7,717,041
TPAs on behalf of welfare and group health plans with less than 1,000 participants and beneficiaries	205	2	410	187.58	76,908
Group health plans issuers on the behalf of welfare and group health plans with less than 1,000 participants and beneficiaries	811	2	1,622	187.58	304,255
Total (First-year only)	21,586		43,172		8,098,204

2. Disclosure Costs

While the Department expects the proposed rule to reduce costs associated with distributing covered disclosures, these savings are partly offset by costs related to the following requirements:

(1) Furnishing the NOIA;

(2) Providing a website for covered individuals to access covered documents; and

(3) Distributing the initial notifications of default electronic delivery and right to opt out in paper to each individual before he or she becomes a covered individual.

a. Electronic Delivery Rate for Group Health Plans

For this proposal the Department updates the assumptions regarding the electronic rate of disclosure for group health plans. The current estimate of 67.8 percent reflects the 2002 safe harbor where paper delivery is the default. However, because the proposed rulemaking proposes to make electronic delivery the default delivery method, the Department is now estimating a 90 percent rate of electronic disclosure for group health plans, which is discussed in greater detail below.

i. Electronic Delivery Rate When Paper Delivery is the Default

For purposes of estimating the electronic disclosure rate under the Departments 2002 safe harbor, the Department relied on survey data to assess participants' access to the internet through work and outside of work, as well as their willingness to receive information electronically. This framework reflects the structure of the Department's 2002 safe harbor, which conditions electronic delivery on both access and electronic consent.

[76] On average, the reading rate is 250 words per minute (WPM), which also corresponds to the typical length of a page. Therefore, a regulation document that is approximately 120 pages long would take about 120 minutes to read, translating to 2 hours (120 pages × 250 words per page ÷ 250 words per minute ÷ 60 minutes = 2 hours).

[77] Internal Department calculation based on 2025 labor cost data. For a description of the Department's methodology for calculating wage rates, see *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculations* (June 2019), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

With respect to internet access at work, the National Telecommunications and Information Administration's (NTIA) internet Use Survey indicates that in 2023, 46.5 percent of individuals between the ages of 25 and 64 reported having access to the internet at work.[78] In addition, a Greenwald & Associates survey found that 84 percent of plan participants considered it acceptable for plans to make electronic delivery the default method of disclosure.[79] Applying these estimates yields an estimated electronic disclosure rate of 39.1 percent for disclosures delivered at work (46.5 percent × 84 percent).

Regarding participants who only have internet access outside of work, NTIA data further indicate that an additional 47.0 percent of individuals age 25 and over have access to the internet only outside the workplace.[80] For this population, the Department relied on a 2013 Pew Research Center survey indicating that 61 percent of internet users engage in online banking, which is used as a proxy for affirmative consent to receive electronic disclosures.[81] Applying these proxies yields an estimated electronic disclosure rate of 28.7 percent for disclosures delivered outside of work (47 percent × 61 percent).

Taken together, these estimates produce an overall electronic disclosure rate of 67.8 percent when paper delivery is default.[82] Please see Table 4 for more details.

TABLE 4—ELECTRONIC DELIVERY OF 67.8 FOR WHEN PAPER DELIVERY IS DEFAULT

Channel	Internet access rate (A)	Proxy for acceptance/consent (B)	Electronic disclosure rate (C) = (A x B)
Internet Access at Work	46.5 percent (NTIA, access at work, between age 25 and 64).	84.0 percent (Greenwald, accept electronic default).	39.1 percent.
Internet Access Outside of Work ...	47.0 percent (NTIA, access outside work, age 25 and over).	61.0 percent (Pew, online banking as proxy for affirmative consent).	28.7 percent.
Total Electronic Delivery Rate	.....	.....	67.8 percent.

ii. Electronic Delivery Rate when Electronic Delivery is the Default

In response to the proposed rule, the Department has examined survey estimates regarding access and use of the internet with respect to health information in order to update the assumptions used in this analysis. Although the sources utilized vary in survey design, population, and question framing, they consistently indicate higher levels of acceptance of electronic delivery when paper remains available upon request. The Department's approach is intended to avoid reliance on any single survey and to reduce the risk of overstating acceptance based on one data source alone.

The Department has identified the following data related to actual interaction with electronic documents by plan participants:

- According to the 2025 ERIC and Ipsos poll, 91 percent of employees enrolled in ERISA-covered health plans most often access their benefits information electronically (*e.g.* by email, online portal, or mobile app), and 78 percent prefer to use default electronic delivery to receive information about their health insurance benefit.[83]
- Data from the Health Information National Trends Survey (HINTS) indicate that 92.1 percent of adults, in 2022, reported using a computer, smartphone, or other electronic means to look up health information, communicate with providers, schedule appointments, or access test results.[84]

Based on these studies, the Department has updated the estimated electronic delivery rate to 90 percent. While the 2025 ERIC and Ipsos poll found that fewer employees preferred electronic delivery, as most are already accessing information electronically, the Department believes that not all individuals who do not ''prefer'' electronic delivery would opt out of electronic delivery if it becomes the default. In developing this estimate, the Department chose to use a slightly lower, rounded estimate to account for this uncertainty.

Further, this electronic rate is consistent with the notion that group health plan participants may be younger on average, and they are more likely to access information online. According to the 2021 American Community Survey, internet access was high among younger households between ages 15 to 64, with access rates generally ranging from approximately 92 to 95 percent. In contrast, internet access among older households, specifically 65 and over, was somewhat lower (81 percent).[85]

The Department requests comments on these assumptions.

b. Cost of Notice of internet Availability

The proposed rule requires that group health plans electronically send a NOIA to all participants. The Department assumes the notice would be sent electronically on an annual basis to an estimated 90 percent of participants with an estimated 10 percent of participants receiving a paper notice.

The Department also assumes the preparation of the notice would

[78] National Telecommunication and Information Administration (NTIA), *internet Use Survey* (2023).

[79] Quantria Strategies, *Improving Outcomes with Electronic Delivery of Retirement Plan Documents* (June 2015), *https://www.sparkinstitute.org/content-files/improving_outcomes_with_electronic_delivery_of_retirement_plan_documents.pdf.*

[80] This is calculated by subtracting the percent of individuals age 25 and over who use internet at work (37.2 percent) from the percent of individuals 25 and over who use the internet anywhere (84.2 percent). NTIA, *internet Use Survey* (2023).

[81] Susannah Fox, *51% of U.S. Adults Bank Online* (Aug. 2013), *https://www.pewresearch.org/internet/2013/08/07/51-of-u-s-adults-bank-online/.*

[82] In past cost analysis, EBSA has used an electronic disclosure rate of 58.3 percent. This estimate relied on the 2021 NTIA internet Use Survey. When updating this estimate to reflect the 2023 NTIA internet Use Survey, this estimate increases to 67.8 percent.

[83] ERIC, *ERIC and Ipsos Survey Finds Strong Support for Default E-Delivery of Workers' Health Benefits Information* (2025), *https://www.eric.org/wp-content/uploads/2025/05/Ipsos_ERIC_ERISA-eDelivery-Poll_Results_5.2025.pdf.*

[84] National Institute of Health, *Health Information National Trends Survey (HINTS),* (last visited Apr. 28, 2026), *https://odphp.health.gov/healthypeople/objectives-and-data/browse-objectives/health-it/increase-proportion-adults-who-use-it-track-health-care-data-or-communicate-providers-hchit-07/data,*

[85] United States Census, *Computer and internet Use in the United States: 2021,* American Community Survey, Table 1 (June 2024), *https://www2.census.gov/library/publications/2024/demo/acs-56.pdf.*

primarily be automated and would rely on standardized templates. Therefore, the Department estimates that each group health plan would require 1 hour by a compensation and benefits manager, at an hourly labor cost of $193.15,[86] to prepare the NOIA in the first year. Please see Table 5 for calculations and burden.

The Department anticipates a small share of emails would be non-deliverable and would bounce back. In such cases, plans would undertake follow-up actions to obtain a valid email address or provide the notice through paper. The Department recognizes that this process would require some administrative effort; however, maintaining participant contact information, monitoring email delivery, and following up with the affected individuals are already part of the plan's regular business practices. Given the routine nature of these administrative tasks, the Department believes that the proposed requirements would not impose significant additional burden on plans. The Department requests comment on this assumption.

c. Cost of Posting Disclosures and Documents Online

Most health insurance plans offer independent online platforms, such as websites and online portals, that enable users to access information regarding coverage options, benefits, claims processing, and other relevant updates. While a minority of health plans may lack dedicated websites, their information is still accessible through third-party websites or the websites of their parent companies. The Department is of the view that all the required documents are currently available online to participants, and plans and issuers would leverage their existing systems and would thus not incur any additional burden or cost to create new websites or participant portals as a result of this proposed rule.

The Department notes that the posting of disclosures and documents on a website or a participant portal is not a new requirement of the proposed rule but is already included in the baseline as a part of the Department's 2002 safe harbor. The proposed rule would allow more plans, specifically group health plans, to rely on electronic delivery as a default. The Department does not expect plans to incur additional costs as a result of posting disclosures and documents online. For example, if a disclosure is generic and applies to the plan as a whole, plans have already likely posted such documents on their websites and therefore would not incur additional costs.

The Department acknowledges that there are some participant-specific scenarios, which may arise that were previously not part of the baseline. One scenario could be where a disclosure is specific to a participant, and the participant is transitioning from paper to electronic delivery. In this scenario, the plan may need to post such documents online for these individual participants, however they may already post this notice for other plan participants and therefore have the processes in place to expand. Another more likely scenario is that plans may already post individual-specific documents online, even when a participant has requested paper delivery but maintains an online account. Although plans may incur some costs in these scenarios, these activities are part of current operations; therefore, the Department does not anticipate that the proposed rule would result in significant additional burden to plans.

The Department requests comments on these assumptions.

d. Cost of Initial Notice of Default E-Delivery and Right to Opt Out

The proposed rule would require group health plans to send the initial notice of default e-delivery and right to opt out in paper to all participants. The Department assumes that each plan would send the notice of default e-delivery and the right to opt out and that the preparation of this notice would primarily be automated and would rely on standardized templates. Therefore, the Department estimates that each group health plan would require one hour by a compensation and benefit manager at a wage rate of $193.15 to prepare the notice in the first year. Please see Table 5 for calculations and burden.

The Department also assumes that this notice would be sent with other plan materials, resulting in only printing costs. The Department estimates the printing cost to be 5 cents per page, resulting in a printing of $0.20.[87] In the first year, the Department assumes that all participants would receive the notice of default e-delivery and right to opt out. In subsequent years, it is assumed that only newly enrolled participants would receive the opt-out notification. Please see Table 6 for printing costs of the notice.

TABLE 5—COSTS TO PREPARE NOTICES

Activity	Number of respondents	Number of hours per respondent	Total hour burden	Hourly wage rate	Total equivalent cost of hour burden
	(A)	(B)	(C) = (A × B)	(D)	(E) = (A × B × D)
Notice of Internet Availability					
Compensation and benefits manager prepares and email notices of internet availability (First year) ..	*21,586	1	21,586	$193.15	$4,169,336
Prepare Initial Notice of Default E-Delivery and Right to Opt Out					
Compensation and benefits manager prepares notice (First year)	21,586	1	21,586	193.15	4,169,336

[86] Internal DOL calculation for 2026 labor costs, based on 2024 labor cost data. For a description of DOL's methodology for calculating wage rates, see *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculations* (June 2019), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[87] The Department assumes that the initial notice of default e-delivery and right to opt out would be 4 pages long. The printing cost for each page is 5 cents. Thus, the printing cost per notice is $0.20 ($0.05 × 4 pages = $0.20).

TABLE 5—COSTS TO PREPARE NOTICES—Continued

Activity	Number of respondents (A)	Number of hours per respondent (B)	Total hour burden (C) = (A × B)	Hourly wage rate (D)	Total equivalent cost of hour burden (E) = (A × B × D)
Total First Year	21,586		43,172		8,338,672

Note: This is the sum of the number of ERISA-group health plans with more than 1,000 participants and beneficiaries (20,570), the number of TPAs (205), and Issuers/state combinations in the group market (811).

TABLE 6—PRINTING COSTS FOR INITIAL NOTICE OF DEFAULT E-DELIVERY AND RIGHT TO OPT OUT

Activity	Number of notices (A)	Percent of notices sent in mail (B)	Number of notices sent in mail (C) = (A × B)	Printing cost per notice (D)	Total costs (E) = (C × D)
First Year	*68,134,832	100.0	68,134,832	$0.20	$13,626,966
Second Year	32,650,854	100.0	32,650,854	0.20	6,530,171
Third Year	32,650,854	100.0	32,650,854	0.20	6,530,171
Three-Year Average	44,478,847		44,478,847		$8,895,769

Note:
*In the first year, the opt-out notifications are assumed to be sent to all participants. The Department estimates that there are 68,134,832 policyholders between the ages of 15 and 64 in the private sector, based on the 2024 Current Population Survey's Annual Social and Economic Supplement.
** In subsequent years, opt-out notifications are assumed to be sent only to newly enrolled participants. Using the 2024 Job Openings and Labor Turnover Survey (JOLTS) data, there are 60,859,000 new hires in the private sector. The Department also estimates that 53.65 percent of workers are ESI policyholders, based on the 2024 Current Population's Survey Annual Social and Economic Supplement. This results in an estimated 32,650,854 ESI policyholders for which the notice would be sent in subsequent years (60,859,000 new hires × 53.65 percent).

3. Summary of Total Costs

A summary of the costs associated with the proposed rule can be found in Table 7.

TABLE 7—SUMMARY OF TOTAL COSTS

Activity	First year cost	Subsequent year cost
Rule Familiarization	$8,098,204	$0
Preparation of Notices	8,338,672	0
Printing Notices	13,626,966	6,530,171
Total	30,063,842	6,530,171

4. Sensitivity Analyses of Costs to Time Estimates

Given the uncertainty surrounding these cost estimates, particularly due to variation in plan complexity, the Department has conducted a sensitivity analysis to examine how the estimated costs would change if there were a decrease or increase in the hour burden from the primary assumptions. Please see Table 8 for sensitivity analysis of hour burden estimates regarding the change in time required for rule familiarization, notice of internet availability, and initial notice of default e-delivery and right to opt out.

TABLE 8—SENSITIVITY ANALYSIS TABLE

Activity	Number of notices (A)	Number of hours per notice (B)	Hourly wage rate (C)	Total cost (D) = (A × B × C)	Change in cost (E) = primary cost estimate − (D)
1. *Rule Familiarization:*					
A. Legal professional reviews proposed rule (First year).					
	21,586	0.5	$187.58	$2,024,551	−$6,073,653
	21,586	1	187.58	4,049,102	−4,049,102

TABLE 8—SENSITIVITY ANALYSIS TABLE—Continued

Activity	Number of notices (A)	Number of hours per notice (B)	Hourly wage rate (C)	Total cost (D) = (A × B × C)	Change in cost (E) = primary cost estimate − (D)
Primary Assumption	*21,586*	*2*	*187.58*	*8,098,204*	*0*
	21,586	4	187.58	16,196,408	8,098,204
	21,586	5	187.58	20,245,509	12,147,306
2. Notice of Internet Availability:					
A. Compensation and Benefits Manager prepares Notice of Internet Availability (First year).					
	21,586	0.25	193.15	1,042,334	−3,127,002
	21,586	0.5	193.15	2,084,668	−2,084,668
Primary Assumption	*21,586*	*1*	*193.15*	*4,169,336*	*0*
	21,586	2	193.15	8,338,672	4,169,336
	21,586	3	193.15	12,508,008	8,338,672
3. Initial Notice of Default E-Delivery and Right to Opt Out:					
A. Compensation and Benefits Manager prepares initial notice of default e-delivery and right to opt out (First year).					
	21,586	0.25	193.15	1,042,334	−3,127,002
	21,586	0.5	193.15	2,084,668	−2,084,668
Primary Assumption	*21,586*	*1*	*193.15*	*4,169,336*	*0*
	21,586	2	193.15	8,338,672	4,169,336
	21,586	3	193.15	12,508,008	8,338,672

The combined cost differences from the primary assumptions with the lowest and the highest estimate in the sensitivity assumptions are summarized in Table 9 below.

TABLE 9—SUMMARY OF SENSITIVITY ANALYSIS

	Upper bound	Primary assumption	Lower bound	Difference with upper bound	Difference with lower bound
First-year cost	$45,261,525	$16,436,876	$4,109,219	$28,824,649	−$12,327,657

Note: Subsequent year costs are distribution costs only and constant across scenarios.

5. Disclosure Cost Savings

The Department anticipates that this proposed rule may reduce hourly costs, material costs, or service fees associated with mailing disclosures. TPAs typically charge group health plans for printing, mailing, and processing disclosures, and these costs would be lowered through web disclosures or disclosures by email. These service fees by TPAs are typically assessed at a per-piece cost to the plan, but these fees would also inherently capture the labor cost of the service provider to print and mail the disclosure. The Department anticipates this proposed rule would increase electronic delivery and reduce the costs associated with paper disclosures, resulting in a cost savings of approximately $402 million per year.

To estimate these cost savings, the Department looked at impacted information collections with the largest cost savings, which are estimated in Table 10. This rulemaking is a Department of Labor only rule making, so estimates of cost-savings takes into account only the Department's share of disclosure burden. The Department notes that while some notices shared with the Department of Health and Human Services could be affected, these proposed regulations do not change the status quo for entities under the jurisdiction of the Department of Health and Human Services. In addition, while the Department of the Treasury shares jurisdiction with the Department over ERISA-covered group health plans, Treasury's share of cost savings has not been included in this analysis.

The following information collection requests (ICRs) are among those to be affected:

- 1210–0040 Employee Retirement Security Summary Annual Report
- 1210–0053 Employee Benefit Plan Claims Procedure Under the ERISA
- 1210–0113 National Medical Support Notice
- 1210–0123 Consolidated Omnibus Budget Reconciliation Act (COBRA)
- 1210–0137 Model Employer Children's Health Insurance Program Notice
- 1210–0138 Mental Health Parity and Addiction Equity Act (MHPAEA)
- 1210–0147 Summary of Benefits and Coverage (SBC) and Uniform Glossary Required Under the Affordable Care Act
- 1210–0149 Notice to Employees of Coverage Options Under Fair Labor Standards Act Section 18B
- 1210–0169 No Surprises Act: IDR Process

The Department notes that one stakeholder independently conducted an analysis to evaluate the impact of adopting electronic delivery as the default method for distributing welfare

plan information.[88] The stakeholder estimated higher cost savings than the Department estimates.[89]

The stakeholder's analysis appears to be based on a broader set of health-related information collection requirements, including notices administered by HHS, which are out of scope of this proposed rule. In addition, the stakeholder applied relatively uniform cost assumptions across information collection requirements, whereas the Department's estimates reflect notice-specific cost assumptions. The stakeholder's analysis also included costs not affected by a change in the form of delivery and are therefore not impacted by this proposed rule. For example, the stakeholder's analysis also included the labor costs of attorneys and mailing clerks associated with preparing the notice, which would not be affected by a change in the form of delivery. As a result of these jurisdictional and methodological differences, the Department's estimated cost savings are lower than those reported by the stakeholder.

TABLE 10—ESTIMATED ANNUAL COST SAVINGS ATTRIBUTABLE TO THE PROPOSED RULE

Selected disclosures	OMB control numbers	No.s of disclosures (millions)	Current electronic delivery rate	New electronic delivery rate	Cost per mailing	Mailing cost at current electronic delivery rate ($ million)	Mailing cost at new electronic delivery rate ($ million)	Annual cost savings from electronic delivery rate change ($ million)
		(B)	(C)	(D)	(E)	F = [B × (1–C) × E]	G= [B × (1–D) × E]	H = (F–G)
Employee Benefit Plan Claims Procedure Under the ERISA	1210–0053	1,436.02	0.68	0.90	$1.10	$508.64	$157.96	$350.7
No Surprises Act: IDR Process	1210–0169	25.21	0.68	0.90	1.05	8.52	2.65	5.9
Summary of Benefits and Coverage (SBC) and Uniform Glossary Required Under the Affordable Care Act	1210–0147	38.90	0.68	0.90	1.05	13.15	4.08	9.1
Consolidated Omnibus Budget Reconciliation Act (COBRA)	1210–0123	56.78	0.68	0.90	1.05	19.20	5.96	13.2
Model Employer Children's Health (CHIPRA)	1210–0137	223.43	0.68	0.90	0.20	14.39	4.47	9.9
Employee Retirement Income Security Act Summary Annual Report Requirement (SAR)	1210–0040	33.68	0.68	0.90	1.10	11.93	3.70	8.2
Notice to Employees of Coverage Options Under Fair Labor Standards Act Section 18B	1210–0149	31.60	0.68	0.90	0.24	2.41	0.75	1.7
National Medical Support Notice (NMSN)	1210–0113	10.75	0.68	0.90	1.05	3.64	1.13	2.5
Mental Health Parity and Addiction Equity Act (MHPAEA)	1210–0138	2.13	0.68	0.90	1.03	0.71	0.22	0.49
Total Cost Savings								401.7

TABLE 11—ESTIMATED ANNUAL NET COST ATTRIBUTABLE TO THE PROPOSED RULE

[$ million]

	First year cost	Subsequent year costs
Rule Familiarization Costs	$8.1	$0
Preparing Disclosures	8.3	0.0
Mailing Cost of Opt-Out Notification	13.6	6.5
Total Rule Costs	30.1	6.5
Total Cost Savings	−401.7	401.7
Net Cost *	−371.6	−395.1

Note: A negative net cost reflects cost savings.

J. Alternatives

In addition to the regulatory approach outlined in the proposed rule, the Department considered an alternative approach during the development of the proposed rule. It is discussed in greater detail below.

1. Maintain the Existing Safe Harbor

The Department considered retaining the existing electronic disclosure safe harbor and not making changes to the requirements governing how group health plans provide disclosures to participants and beneficiaries. This approach would avoid any new compliance costs or changes to existing administrative processes. However, the Department believed that maintaining the current rules would not address the concerns regarding access to information that have emerged as technology and participant communication preferences have evolved.

[88] Avalere Health, *Memo on Cost Savings Associated with Default E-Delivery for ERISA Health & Welfare Plan Disclosures* (Nov. 25, 2025), *https://www.eric.org/wp-content/uploads/2025/12/ERISA-E-Delivery-Economic-Model-Memo_FINAL.pdf.*

[89] Avalere estimates that extending the safe harbor to ERISA health and welfare plan disclosures and some HHS disclosures would generate an estimated $19.5 billion in net savings for between 2025 and 2034.

While maintaining the existing safe harbor would avoid short-term compliance costs—estimated as $30 million in the first year and $7 million in subsequent years—it would result in higher ongoing printing, mailing, and administrative costs. As discussed in the Costs section, the Department estimates that the proposed rule would result in cost savings of approximately $402 million annually. As such, maintaining the existing safe harbor would forgo efficiency gains and result in higher aggregate compliance costs over time. For these reasons, the Department did not select this alternative.

2. Expand the Proposed Rule To Cover All Welfare Plans

The Department also considered expanding the proposed rule to apply to all welfare (*e.g.* disability, life insurance) plans, rather than limiting its scope to only group health plans. This approach would allow a broader set of welfare plans to rely on electronic delivery and could generate additional cost savings through reduced printing, mailing, and administrative expenses.

However, welfare plans vary significantly in their disclosure requirements and administrative practices, and the Department determined that applying the proposed electronic delivery requirements across welfare plan types would not appropriately reflect these differences. For this reason, the Department did not select this alternative, concluding that limiting the scope of the proposed rule to group health plans was more appropriate at this time. Using the same methodology as used in the analysis for health plans extending the proposed rule to welfare plans would create an annual cost savings of $90,000.

3. Limit the Proposed Rule To Cover Certain Types of Group Health Plans

Additionally, the Department considered limiting the expanded electronic safe harbor to certain categories of group health plans, such as large plans, collectively bargained plans, or plans whose participants are more likely to have consistent access to electronic communication This alternative could have targeted populations most likely to benefit from electronic disclosures and eased implementation challenges for smaller or resource-constrained plans. However, limiting the safe harbor based on plan characteristics would create inconsistent disclosure requirements and could increase administrative complexity for employers offering multiple types of plans.

The Department concluded that a uniform approach promotes regulatory clarity, reduces compliance burdens, and ensures more equitable treatment of similarly situated plans. For these reasons, the Department did not pursue a limited-scope alternative.

If the Department had restricted the proposed rule to cover only certain types of group health plans, this would have decreased the costs and cost savings of the proposed rule, decreasing the net cost savings overall. The extent of this decrease would depend on the restriction.

4. Require Additional Participant Protections

Finally, the Department considered imposing additional participant protections beyond those included in this proposed rule, such as mandatory periodic paper reminders, enhanced confirmation requirements, or more stringent notice provisions. These alternative measures could have further reduced the risk that certain participants might overlook or fail to access electronic disclosures and may have provided additional reassurance for stakeholders concerned about digital accessibility.

However, expanding participant protection requirements would also increase administrative costs and complexity, potentially offsetting many of the efficiencies and cost savings associated with broader electronic delivery. After taking these issues into consideration, the Department concluded that the protections included in the proposed rule provide an appropriate and effective level of participant safeguards without imposing unnecessary burdens. As a result, this alternative was not selected.

K. Uncertainty

1. Uncertainty on Security of Paper Documents vs. Electronic Documents

There is uncertainty regarding the extent to which electronic delivery improves the security of plan and personal information relative to paper-based disclosures. Paper documents may be lost, misdelivered, stolen, or intercepted, potentially exposing participants to privacy risks.[90] At the same time, electronic disclosures may introduce different risks, including unauthorized access through compromised accounts or systems.

While electronic delivery may allow group health plans to implement security measures such as password protection, multi-factor authentication, encryption, and audit trails, the Department lacks comprehensive data to quantify how these protections compare to risks associated with mailed materials. Accordingly, the Department cannot determine with certainty whether electronic delivery reduces overall risks of unauthorized disclosure, identity theft, or compliance issues.

The Department requests comments on the relative frequency, severity, and consequences of data loss or unauthorized disclosures associated with mailed materials compared to electronic disclosures, including any available data or estimates regarding incidents involving PII and PHI.

2. Uncertainty on How Electronic Disclosures Would Impact Different Participants

There is also uncertainty whether electronic disclosures may be less accessible for older, rural, and low-income participants. It is possible that these participants may choose to opt out of electronic disclosures. Estimates based on smartphone ownership or home broadband services may not indicate those individuals for whom electronic disclosure may not be the optimal delivery method. Additionally, there are those that lack access to either smartphones or broadband internet. However, the lack of access to one form of electronic communication does not mean no access. For example, approximately a quarter of U.S. adults (24 percent) with household incomes below $30,000 a year reported that they do not own a smartphone. Furthermore, approximately 40 percent of U.S. adults with lower incomes do not have home broadband services (43 percent) or a desktop or laptop computer (41 percent).[91] Additionally, 28 percent of rural Americans reported not having a broadband internet connection at home, and 28 percent reported not owning a desktop or laptop.[92] These statistics are significant considering given that 26

[90] Kenesa Ahmad, *The Top Five Reasons to Favor Electronic Disclosure, American Society of Pension Professionals & Actuaries* (Nov. 02, 2017), *https://www.asppa-net.org/news/2017/11/top-five-reasons-favor-electronic-disclosure/.*

[91] Emily Vogel, *Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption,* Pew Research Center (June 22, 2021), *https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.*

[92] The survey reported 72 percent of rural Americans having a broadband internet connection at home, and 72 reported owning desktop or laptop (*Source:* Emily Vogel, *Some Digital Divides Persist Between Rural, Urban and Suburban America,* Pew Research Center (Aug. 19, 2021), *https://www.pewresearch.org/short-reads/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/#:~:text=Roughly%20seven%2Din%2Dten%20rural,8%2C%202021.*)

percent of U.S. adults aged 19 to 64 with incomes below 200 percent of the federal poverty level have private health insurance.[93]

Even among individuals who have access to a smartphone or broadband connection, many participants may still face challenges navigating the digital landscape such as difficulty opening attachments, accessing secure portals, or managing password-protected documents due to overall lack of knowledge or updated technology. These barriers may reduce the effectiveness of electronic disclosures for certain plan participants.

L. Conclusion

The proposed rule is intended to extend the 2002 safe harbor to group health plans so that participants and beneficiaries can more readily access required plan information through modern electronic delivery methods. The Department is of the view that expanding the safe harbor would increase the availability, timeliness, and usability of disclosures, allowing participants to receive plan materials in a manner that better reflects how participants communicate and obtain information today.

Increased reliance on electronic delivery is expected to reduce delays associated with paper-based delivery systems, improve the accuracy and consistency of information provided to participants, and support more efficient plan administration. By making key notices and disclosures more accessible, the proposed rule would provide faster access to plan documents and help participants make better-informed decisions about their benefits and rights under the plan. Taken together, these outcomes could strengthen participants' access to critical group health plan information, enhance administrative efficiency for group health plans, and ultimately improve overall engagement and understanding of available benefits.

IV. Paperwork Reduction Act—Department of Labor

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[94] This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed ICR included in the *Electronic Disclosure by Group Health Plans Under ERISA.* To obtain a copy of the ICR, contact the PRA addressee shown below or go to *https://www.RegInfo.gov.*

The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden for the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronically delivered responses).

Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to the proposed rule (for example, through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM.

PRA Addressee: Address requests for copies of the ICR to PRA Clearance Officer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; *ebsa.opr@dol.gov* (*https://www.reginfo.gov/public/do/PRAMain*).

For a full discussion of this information collection please see the supporting statement that is part of the ICR, available at *https://www.reginfo.gov/public/do/PRAMain.*

A. Proposed Rule

As discussed above, the proposed regulation would create two information collections that are subject to the PRA: The annual NOIA (29 CFR 2520.104b–32(d)(2)) and the initial notification (29 CFR 2520.104b–32(g)). The proposed rule would also reduce costs for some of the Department's existing information collections.

The Department is unaware of any data source that would directly identify the number of group health plans and TPAs that would decide to use the proposed rule. Therefore, for purposes of this analysis, the Department conservatively assumes that all group health plans and TPAs would use the proposed rule for at least some of their covered individuals. As discussed in the Cost Savings section above, the Department estimates that plan administrators using the proposed rule would incur a one-time start-up cost to prepare and distribute the annual NOIA and the initial notification. The proposed rule's impact on the hour and cost burden associated with the Department's information collections is discussed below.

Please see Table 12 for a summary of the hour and cost burden. For a description of how the estimates are obtained please see the Costs section of the RIA.

TABLE 12—SUMMARY OF HOUR AND COST BURDEN FOR DEPARTMENT OF LABOR

Activity	First year	Subsequent year	Three-year average
Preparation of Notices (Hour Burden)	43,172	0	14,391
Printing Costs (Cost Burden)	$13,626,966	$6,530,171	$8,895,769

[93] KFF, *Health Insurance Coverage of Low Income Adults 19–64 (under 200% FPL)* (2023), *https://www.kff.org/state-health-policy-data/state-indicator/health-insurance-coverage-low-income-adults/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7.*

[94] 44 U.S.C. 3506(c)(2)(A) (1995).

Agency: Employee Benefits Security Administration.

Title: Electronic Disclosure by Group Health Plans Under ERISA.

Type of Review: New.

OMB Control Number: 1210–NEW.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Respondents: 21,586.

Responses: 44,478,847.

Estimated Total Burden Hours: 14,391.

Estimated Total Costs: $8,895,769.

B. Cost Reduction Associated With Other Existing Information Collections

The proposed rule, if finalized, would affect the burden for existing information collections of covered disclosures by reducing the cost of delivery. Specifically, the proposed rule would reduce the burden associated with the information collections covered by the PRA, as listed and discussed below. The burden estimates shown are the cost burdens for the most recently approved ICRs. Burden savings adjust for the share of plans and participants the Department estimates would use electronic delivery. While cost saving can be large, the adjustment of the burden for these ICRs is not material and considered non-substantive changes to a currently approved collection, and therefore the Department will submit non-substantive change request for these ICRs to account for the changes in burden if the proposed rule is finalized.

Title: Employee Retirement Income Security Act Summary Annual Report Requirement.

Type of Review: Revision.

OMB Control Number: 1210–0040.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 809,901.

Responses: 178,211,549.

Estimated Total Burden Hours: 1,068,322.

Estimated Total Costs: $18,423,119.

Descriptions:

ERISA section 104(b)(3) and the regulation published at 29 CFR 2520.104b-10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

The Department estimates that the proposed rule would reduce the annual cost burden by $8.2 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Benefit Plan Claims Procedure Under the ERISA.

Type of Review: Revision.

OMB Control Number: 1210–0053.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 1,361,027,168.

Responses: 359,274,110.

Estimated Total Burden Hours: 28,981,362.

Estimated Total Costs: $262,270,078.

Description:

In November 2000, the Department issued a final regulation establishing minimum claims procedure requirements that all employee benefit plans under ERISA must meet in order to satisfy the requirements of section 503 of ERISA. Section 505 of ERISA authorizes the Secretary to prescribe regulations as appropriate or necessary to carry out the provisions of Title I of ERISA. The regulation requires plans to provide every claimant who is denied a claim with a written or electronic notice that contains the specific reasons for denial, a reference to the relevant plan provisions on which the denial is based, a description of any additional information necessary to perfect the claim, and a description of steps to be taken if the participant or beneficiary wishes to appeal the denial. The regulation also requires that any adverse decision upon review be in writing (including electronic means) and include specific reasons for the decision, as well as references to relevant plan provisions. The information collection requirements included in the claims procedure regulation ensure that participants and beneficiaries (claimants) receive adequate information regarding the plan's claims procedures and the plan's handling of specific benefit claims.

The Department estimates that the proposed rule would reduce the annual cost burden by $350.7 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: National Medical Support Notice.

Type of Review: Revision.

OMB Control Number: 1210–0113.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 399,269.

Responses: 5,645,697.

*Estimated Total Burden Hours:*896,142.

Estimated Total Costs: $5,927,982.

Description:

Pursuant to section 401(a) of the Child Support Performance and Incentive Act of 1998 (CSPIA),[95] the Department of Labor (the Department) and HHS jointly promulgated the National Medical Support Notice Final Rule on December 27, 2000 (65 FR 82128) (NMSN Regulation). The NMSN Regulation simplifies the issuance and processing of medical child support orders; standardizes communication between State agencies, employers, and Plan Administrators; and creates a uniform and streamlined process for enforcement of medical child support to ensure that all eligible children receive the health care coverage to which they are entitled.

The NMSN Regulation, codified at 29 CFR 2590.609–2, includes a model notice that is comprised of two parts: part A is a notice from the State agency to the employer, entitled: ''Notice to Withhold for Health Care Coverage;'' and part B is a notice from the employer to the Plan Administrator, entitled: ''Medical Support Notice to Plan Administrator.'' Both parts have detailed instructions informing the recipient to whom responses are due depending on varying circumstances. This ICR addresses the Plan Administrator's responsibilities under NMSN Regulation to complete part B of the NMSN, the ''Plan Administrator Response,'' pursuant to the CSPIA and section 609(a)(5)(C) of title I of ERISA.

The ''Plan Administrator Response'' in part B of the NMSN requires the Plan Administrator to provide information verifying whether the child is or will be receiving health care coverage from the group health plan. If enrollment has already occurred or can begin immediately, the Plan Administrator's response in part B serves as notice to the State agency, the participant (parent), the child, their non-participant parent or guardian and the employer that the child is or will begin receiving dependent health care coverage pursuant to the group health plan. When the child is eligible for more than one coverage option, the Administrator must first send the part B response to the State agency so that the agency may choose one option. The Plan Administrator must also use the part B response to notify all the above-affected persons of any waiting period before enrollment of the child can occur.

The Department estimates that the proposed rule would reduce the annual cost burden by $2.5 million.

Agency: Employee Benefits Security Administration, Department of Labor.

[95] Public Law 105–200 (July 16, 1998).

Title: Consolidated Omnibus Budget Reconciliation Act (COBRA).

Type of Review: Revision.

OMB Control Number: 1210–0123.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 1,955,080.

Responses: 26,890,373.

Estimated Total Burden Hours: 490,857.

Estimated Total Costs: $16,403,128.

Description:

COBRA provides that under certain circumstances participants and beneficiaries of group health plans that satisfy the definition of qualified beneficiaries under COBRA may elect to continue group health coverage temporarily following events known as a qualifying event that would otherwise result in loss of coverage. COBRA provides that the Secretary of Labor (the Secretary) has the authority under section 608 of ERISA to carry out the provisions of Part 6 of title I of ERISA. The Conference Report that accompanied COBRA authorized the Secretary to issue regulations implementing the notice and disclosure requirements of COBRA. Under the regulatory guidelines, plan administrators are required to distribute notices as follows: a general notice to be distributed to all participants in group health plans subject to COBRA; an employer notice that must be completed by the employer upon the occurrence of a qualifying event; a notice and election form to be sent to a participant upon the occurrence of a qualifying event that might cause the participant to lose group health coverage; an employee notice that may be completed by a qualified beneficiary upon the occurrence of certain qualifying events such as divorce or disability; and, two other notices, one of early termination and the other a notice of unavailability. Also included in the ICR are two model notices that the Department believes would help reduce costs for service providers in preparing and delivering notices to comply with the regulations.

The Department estimates that the proposed rule would reduce the annual cost burden by $13.2 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Model Employer Children's Health Insurance Program Notice.

Type of Review: Revision.

OMB Control Number: 1210–0137.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 7,156,384.

Responses: 223,433,165.

Estimated Total Burden Hours: 776,430.

Estimated Total Costs: $18,634,326.

Description:

On February 4, 2009, the Children's Health Insurance Program Reauthorization Act of 2009 was signed into law (CHIPRA, Pub. L. 111–3). Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and Children's Health Insurance Program (CHIP) for health coverage of the employee or the employee's dependents. These notices are referred to as ''Employer CHIP Notices.'' ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement, which is referred to as the ''Model Employer CHIP Notice.'' The model language is required to include information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance.

The Department estimates that the proposed rule would reduce the annual cost burden by $9.9 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Mental Health Parity and Addiction Equity Act (MHPAEA).

Type of Review: Revision.

OMB Control Number: 1210–0138.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 2,129,516.

Responses: 1,776,016.

Estimated Total Burden Hours: 707,951.

Estimated Total Costs: $3,303,390.

Description:

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008, as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110–343). MHPAEA amends ERISA, the PHS Act, and the Code. In 1996, Congress enacted the Mental Health Parity Act of 1996, which required parity in aggregate lifetime and annual dollar limits for mental health benefits and medical and surgical benefits. Those mental health parity provisions were codified in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code. The changes made by MHPAEA are codified in these same sections and consist of new requirements as well as amendments to several of the existing mental health parity provisions applicable to group health plans and health insurance coverage offered in connection with a group health plan. MHPAEA and the interim final regulations do not apply to small employers who have between two and 50 employees. The changes made by MHPAEA are generally effective for plan years beginning after October 3, 2009. MHPAEA and the final regulations (29 CFR 2590.712(d)) require plan administrators to disclose the criteria for medical necessity determinations with respect to mental health and substance use disorder benefits. These third-party disclosures are ICRs for purposes of the PRA. In response to provisions of the Cures Act, the Department provides a model form that participants, enrollees, or their authorized representatives can use to request information from their health plan or issuer regarding Non-Quantitative Treatment Limitations (NQTLs) that may affect their Mental Health and Substance Use Disorders (MH/SUD) benefits, or to obtain documentation after an adverse benefit determination involving MH/SUD benefits to support an appeal.

The Department estimates that the proposed rule would reduce the annual cost burden by $0.49 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act (SBC).

Type of Review: Revision.

OMB Control Number: 1210–0147.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 2,588,983.

Responses: 33,829,725.

Estimated Total Burden Hours: 303,970.

Estimated Total Costs: $15,224,218.

Description:

The Patient Protection and Affordable Care Act, Public Law 111–148, was signed into law on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, was signed into law on March

30, 2010 (collectively known as the ''Affordable Care Act''). The Affordable Care Act amends PHS Act by adding section 2715 ''Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions.'' Each group health plan and health insurance issuer offering group insurance coverage must provide a summary of benefits and coverage to plans and participants at specified points in the enrollment process. This disclosure must include, among other things, coverage examples that illustrate common benefits scenarios and related cost sharing. Additionally, plans and issuers must make the uniform glossary available in electronic form, with paper upon request, and provide 60 days' advance notice of any material modifications in the plan or coverage.

The Department estimates that the proposed alternative safe harbor would reduce the annual cost burden by $9.1 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice to Employees of Coverage Options Under Fair Labor Standards Act Section 18B.

Type of Review: Revision.

OMB Control Number: 1210–0149.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 10,909,076.

Responses: 31,595,244.

Estimated Total Burden Hours: 263,294.

Estimated Total Costs: $5,480,827.

Description:

Many provisions of the Affordable Care Act that became effective in 2014 were designed to expand access to affordable health coverage. These include provisions for coverage to be offered through a Health Insurance Marketplace (Marketplace), premium tax credits to assist individuals in purchasing such coverage, employer notice to employees of coverage options available through the Marketplace, and other related provisions. Since January 1, 2014, individuals and employees of small businesses have had access to affordable coverage through a competitive private health insurance market—Health Insurance Marketplace. The Marketplace offers ''one-stop shopping'' to find and compare private health insurance options. Section 1512 of the Affordable Care Act created a new Fair Labor Standards Act (FLSA) section 18B (29 U.S.C. 218b) requiring a notice to employees of coverage options available through the Marketplace. Section 18B of the FLSA, as added by section 1512 of the Affordable Care Act, generally provides that, in accordance with regulations promulgated by the Secretary of Labor, an applicable employer must provide each employee at the time of hiring a written notice: informing the employee of the existence of Exchanges including a description of the services provided by the Exchanges, and the manner in which the employee may contact Exchanges to request assistance; if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, then the employee may be eligible for a premium tax credit under section 36B of the Code if the employee purchases a qualified health plan through an Exchange; and if the employee purchases a qualified health plan through an Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

The Department estimates that the proposed rule would reduce the annual cost burden by $1.7 million.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: No Surprises Act.

Type of Review: Revision.

OMB Control Number: 1210–0169.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 2,000,414.

Responses: 5,420,445.

Estimated Total Burden Hours: 1,691,251.

Estimated Total Costs: $58,661,163.

Descriptions:

The CAA added provisions applicable to group health plans and health insurance issuers in the group and individual markets in a new Part D of title XXVII of the PHS Act and also added new provisions to part 7 of ERISA, and Subchapter B of chapter 100 of the Code. Section 102 of the NSA added Code section 9816, ERISA section 716, and PHS Act section 2799A–1, which contain limitations on cost sharing and requirements for initial payments for emergency services. Section 103 of the NSA amended Code section 9816, ERISA section 716, and PHS Act section 2799A–1 to establish a Federal independent dispute resolution (Federal IDR) process that nonparticipating providers or facilities and group health plans and health insurance issuers in the group and individual market may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain services. More specifically, the Federal IDR provisions may be used to determine the out-of-network rate for certain emergency services, nonemergency items and services furnished by nonparticipating providers at participating health care facilities, where an All-Payer Model Agreement or specified state law does not apply.

Section 105 of the NSA created Code section 9817, ERISA section 717, and PHS Act section 2799A–2, which contain limitations on cost sharing and requirements for initial payments for air ambulance services, and allow plans and issuers and providers of air ambulance services to access the Federal IDR process. CAA provisions that apply to health care providers and facilities, and providers of air ambulance services, such as requirements around cost sharing, prohibitions on balance billing for certain items and services, and requirements related to disclosures about balance billing protections, were added to title XXVII of the PHS Act in a new part E.

The Department estimates that the proposed rule would reduce the annual cost burden by $5.9 million.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [96] imposes certain requirements with respect to Federal rules that are subject to the notice-and-comment requirements of section 553(b) and (c) of the Administrative Procedure Act and are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a final rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule.[97] The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.''

The Department has limited data to determine if this proposed rule would have a significant impact on a substantial number of small entities. The Department has prepared this initial regulatory flexibility analysis (IRFA) and requests data or other information it would need to make a final determination.

[96] 5 U.S.C. 601 *et seq.* (1980).

[97] 5 U.S.C. 603 (1980).

A. Need for the Rule

Technology has changed substantially since the Department of Labor first published the 2002 safe harbor for group health plans. Today, a larger share of the public relies on electronic communication and internet-based platforms as their primary means of receiving information. Over 95 percent of U.S. adults use the internet,[98] making electronic delivery an accessible and convenient means for participants and beneficiaries to receive plan information. In addition, electronic delivery may reduce certain risks associated with paper mail, such as loss, misdelivery, or interception, which may help improve protection against fraud and the loss of PHI and PII.

B. Objective of the Rule

The proposed rule would provide flexibility to group health plans, including small group health plans, by permitting required disclosures to be furnished electronically through website posting and providing an NOIA, rather than by default paper delivery. By allowing group health plans to rely on existing electronic communication practices and to use websites maintained by insurers or third-party administrators, the proposed rule would reduce printing, mailing, and administrative costs associated with paper disclosures. At the same time, the proposed rule would preserve protections for participants and beneficiaries by maintaining the right to receive paper copies upon request and to opt out of electronic delivery, ensuring that the approach accommodates group health plans of varying sizes and administrative capabilities and participants' and beneficiaries' choice in method of delivery.

C. Affected Small Entities

The number of small, affected entities are discussed in greater detail in this section.

1. Group Health Plans and Participants

For the purposes of the IRFA, the Department considers employee benefit plans with fewer than 100 participants to be small entities.[99] The basis of this definition is found in ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under ERISA section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued (*see* 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10) simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that satisfy certain requirements.

While some large employers sponsor small plans, small plans are generally maintained by small employers. The Department was unable to identify survey data directly linking these factors, but it believes the assumption is reasonable based on general trends in the available data. For example, the Medical Expenditure Panel Survey shows that firms offering health insurance with fewer than 50 employees had enrollment rates of 53 percent, compared with 56 percent for larger firms.[100] If enrollment rates remain stable or increase as firm size grows, it follows that the number of participants would also increase as firm size increases. Thus, the Department believes that assessing the impact of this proposed exemption on small plans is an appropriate way to evaluate its effect on small entities. The definition of small entity applied for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration [101] pursuant to the Small Business Act.[102] Therefore, the Department requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

The proposed rule would affect ERISA-covered group health plans. The Department estimates there are 2,576,811 ERISA-covered group health plans with less than 100 participants.[103] These plans have approximately 34.7 million participants.[104]

Please see Table 13 for a breakdown of the number of ERISA-Covered group health plans by participant count.

TABLE 13—NUMBER OF ERISA-COVERED GROUP HEALTH PLANS BY PARTICIPANT COUNT

Participant count	Less than 10 participants	10 to 24 participants	25 to 99 participants	Less than 100 participants
ERISA-Covered Group Health Plans	1,407,999	606,407	562,404	2,576,811

2. TPAs and Issuers

In order to estimate the direct impact on small plans the Department looks at the cost to issuers and TPAs that assist group health plans comply with the proposed rule. The Department estimates there are 205 non-issuer TPAs and 373 health insurance companies in the group market (811 issuers when considering the total number of subsidiaries licensed to sell health insurance in a specific State).

Health insurance companies are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $47 million or less are considered small entities for this NAICS code.[105] The Department believes that few, if any, insurance companies underwriting

[98] Pew Research Center, internet Broadband Fact Sheet (Nov. 20, 2025), *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/;* U.S. Census Bureau, Computer and internet Use in the United States: 2021, (June 18, 2024), *https://www.census.gov/newsroom/press-releases/2024/computer-internet-use-2021.html.*

[99] The Department consulted with the Small Business Administration in making this determination, as required by 5 U.S.C. 601(3) and 13 CFR 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

[100] Medical Expenditure Panel Survey Insurance Component, Agency for Healthcare Research & Quality, *https://datatools.ahrq.gov/meps-ic/.*

[101] 13 CFR 121.201 (2011).

[102] 15 U.S.C. 631 *et seq.* (2011).

[103] Based on the 2024 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) and the 2022 County Business Patterns from the Census Bureau.

[104] Employee Benefits Security Administration, *Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2024 Annual Social and Economic Supplement to the Current Population Survey* (Aug. 30, 2025), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2024.pdfhttps://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2024.pdf.*

[105] Small Business Administration, *Table of Size Standards* (Mar. 2023), *https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from the CMS Medical Loss Ratio (MLR) annual report submissions for the 2023 reporting year, approximately 65 [106] out of 373 health insurance companies had total premium revenue of $47 million or less.[107] The Department estimates that approximately 80 percent of these small health insurance companies belong to larger holding groups based on the MLR data, and many, if not all, of these small companies are likely to have non-health lines of business that result in their revenues exceeding $47 million. Therefore, the Department assumes approximately 20 percent, or 13, of the 65 potential small companies are in fact small companies for purposes of this analysis. The Department uses 13 small companies as a conservative upper-bound estimate for purposes of this analysis. The Department seeks comments on these estimates.

TPAs are generally classified under NAICS code 52492 (Third Party Administration and Insurance Pension Funds). Under the SBA size standards, entities in this NAIC category are considered small if they have annual receipts of $15 million or less. While some TPAs may independently meet the size standard, many TPAs operate as affiliates or subsidiaries of large insurance companies or holding groups and therefore may not qualify as small entities when evaluated on a consolidated basis. Therefore, many TPAs may not be considered small entities for purposes of this analysis.

D. Cost and Cost Savings Associated With the Proposed Rule

Small group health plans would incur costs associated with emailing NOIAs, posting disclosures online, and addressing invalid or inoperable electronic addresses, if the proposed rule is finalized. The Department expects that many small plans rely on TPAs for regulatory review, implementation, and disclosures. Further, because small group health plans have fewer participants, they will have fewer electronic addresses to maintain and a smaller volume of notices to generate. As such, the Department does not believe these burdens would be disproportionately borne by small group health plans, when considered on a per plan basis.

To determine whether the proposed rule is expected to have a significant economic impact on a substantial number of small entities, the Department compares the estimated per-entity compliance costs to plan premiums. This illustration assumes that a group health plan's total premiums are equal to the number of participants multiplied by the weighted average of annual health insurance premiums for single and family coverage. The Department estimates average annual premiums to be $13,944 per covered participant.[108]

Table 14 presents the estimated annual compliance cost per plan as a percentage of annual premiums for plans of different sizes. As shown, even for very small plans, the incremental cost of reviewing the proposed rule and preparing and mailing the required notices represents well below one percent of annual premiums. The Department concludes that the proposed rule would not impose a significant economic impact on a substantial number of small entities.

TABLE 14—PER PLAN COSTS AS A PERCENTAGE OF PREMIUMS

	Plans with 10 participants	Plans with 25 participants	Plans with 50 participants	Plans with 75 participants	Plans with 100 participants
Plan Premiums by Size *	$139,440	$348,600	$697,200	$1,045,800	$1,394,400
Cost per Plan	$2.30	$5.30	$10.30	$15.30	$20.30
Total	0.0016%	0.0015%	0.0015%	0.0015%	0.0015%

* Plan Premiums are obtained by average annual premiums per covered participant $13,944 × the number of participants in the plans, so $13,944 × 10 = $139,440.

As discussed in the RIA, the Department estimates that this proposed rule would increase electronic delivery and reduce the costs associated with paper disclosures, resulting in a cost savings of approximately $402 million per year. Table 15 shows the estimated annual per plan cost savings.

TABLE 15—PER PLAN COST SAVINGS

	Plans with <10 participants	Plans with 10–24 participants	Plans with 25–99 participants	All plans
Plans	1,407,999	606,407	562,404	2,765,372
Participants	11,100,000	14,500,000	9,100,000	134,800,000
Cost Savings	$33,073,808	$43,204,523	$27,114,563	$401,653,086
Cost Savings Per Plan	$23.49	$71.25	$48.21	$145.24
Cost Savings Per Plan as a Share of Premium	0.0168%	0.0213%	0.0035%	.....

[106] Projection using 2023 MLR Data.

[107] Centers for Medicare and Medicaid Services, *2023 Medical Loss Ratio Data, https://www.cms.gov/marketplace/resources/data/medical-loss-ratio-data-systems-resources.*

[108] According to the 2024 Medical Expenditure Panel Survey Insurance Component (MEPS–IC), the average annual health insurance premiums in 2024 for self-insured plans were $8,486 for single coverage (represents 59 percent of enrollees), $16,931 for employees-plus-one coverage (represents 18 percent of enrollees), and $24,540 for family coverage (represents 24 of enrollees).Based on these shares, the weighted average annual self-insured premiums is $13,944.

E. Alternatives

1. Exempting Smaller Plans From the Expanded Safe Harbor

The Department considered an alternative under which smaller group health plans would be exempt from the proposed rule. This alternative could have reduced compliance and transition costs for small plans, which may face higher fixed costs when updating systems or administrative processes.

However, exempting smaller plans would limit the realization of cost savings and administrative efficiencies for substantial share of participants, and could create uneven disclosure requirements across plans of different sizes. As displayed in Table 15, this would lower the cost savings of the proposal by $103 million per year, and mean that small plans would receive no cost savings from the proposal.[109] In addition, such an exemption could increase complexity for employers offering multiple plans and reduce predictability for participants who change employment. For these reasons, the Department concluded that a size-based exemption would reduce aggregate efficiency gains and increase administrative fragmentation and burden. Therefore, the Department did not select this alternative.

F. Duplicate, Overlapping, or Relevant Federal Rules

There are no duplicate, overlapping, or relevant Federal rules.

VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[110] For purposes of the UMRA, this rulemaking is not expected to have such an impact on the private sector. For the purposes of this rulemaking, the RIA shall meet the UMRA obligations.

VII. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the Federal Government and States, or on the distribution of power and responsibilities among the various levels of government.[111] Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the proposed rule.

The proposed rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

List of Subjects

29 CFR Part 2520

Accounting, Employee benefit plans, Freedom of information, Pensions, Public assistance programs, Reporting and recordkeeping requirements.

29 CFR Part 2560

Claims, Employee benefit plans, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR parts 2520 and 2560 as set forth below:

PART 2520—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–1031, 1059, and 1134–1135; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–5 also issued under sec. 501 of Pub. L. 109–280, 120 Stat. 780, and sec. 105(a) of Pub. L. 110–458, 122 Stat. 5092. Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k). Secs. 2520.102–3, 2520.104b–1, 2520.104b–3, and 2520.104b–31 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.103–13 also issued under 29 U.S.C. 1023. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

■ 2. Section 2520.104b–1 is amended by revising paragraph (f) to read as follows:

§ 2520.104b–1 Disclosure.

* * * * *

(f) *Alternative disclosure through electronic media.* As an alternative to electronic media disclosure obligations in paragraph (c) of this section, the administrator of an employee benefit plan is deemed to satisfy the requirements of paragraph (b)(1) of this section, provided that the administrator complies with the obligations in § 2520.104b–31 or § 2520.104b–32.

■ 3. Section 2520.104b–32 is added to subpart F to read as follows:

§ 2520.104b–32 Alternative method for disclosure through electronic media—Notice-and-access.

(a) *Alternative method for disclosure through electronic media—Notice-and-access.* As an alternative to § 2520.104b–1(c), the administrator of a group health plan as defined under section 733(a)(1) of the Act satisfies the general furnishing obligation in § 2520.104b–1(b)(1) with respect to covered individuals and covered documents, provided that the administrator complies with the notice, access, and other requirements of paragraphs (b) through (k) of this section, as applicable.

(b) *Covered individual.*

(1) For purposes of this section, a ''covered individual'' is a participant, beneficiary, or other individual entitled to covered documents and who—when he or she begins participating in the plan, as a condition of employment, or otherwise—provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an email address or internet-connected mobile-computing-device (*e.g.,* ''smartphone'') number, at which the covered individual may receive a written notice of internet availability, described in paragraph (d) of this section. Alternatively, if an electronic address is assigned by an employer to an employee for employment-related purposes that include but are not limited to the delivery of covered documents, the employee is treated as if he or she provided the electronic address.

(2) A dependent child who is a beneficiary under the group health plan is a covered individual if he or she has attained 18 years of age and has provided to the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) an

[109] This is calculated by adding the cost savings for all plans with 99 or less participants.

[110] 2 U.S.C. 1501 *et seq.* (1995).

[111] Federalism, 64 FR 43255 (Aug. 4, 1999).

electronic address to receive covered documents.

(c) *Covered documents.* For purposes of this section, a ''covered document'' is any document or information that the administrator of a group health plan is required to furnish to participants and beneficiaries pursuant to Title I of the Act.

(d) *Notice of internet availability—*

(1) *General.* The administrator must furnish to each covered individual a notice of internet availability for each covered document in accordance with the requirements of this section.

(2) *Timing of notice of internet availability.*

(i) A notice of internet availability must be furnished at the time the covered document is made available on the website described in paragraph (e) of this section. However, if an administrator furnishes a combined notice of internet availability for more than one covered document, as permitted under paragraph (i) of this section, the requirements of this paragraph (d)(2) are treated as satisfied if the combined notice of internet availability is furnished each plan year, and, if the combined notice of internet availability was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished.

(ii) For covered documents that a group health plan is required to furnish only upon request, a notice of internet availability is only required following a request by a covered individual for such covered document, once such covered document has been made available on the website described in paragraph (e) of this section.

(3) *Content of the notice of internet availability.*

(i) A notice of internet availability furnished pursuant to this section must contain the information set forth in paragraphs (d)(3)(i)(A) through (H) of this section:

(A) A prominent statement—for example as a title, legend, or subject line—that reads: ''Disclosure About Your Health Plan.''

(B) A statement that reads: ''Important information about your health plan is now available. Please review this information.''

(C) An identification of the covered document by name (for example, a statement that reads: ''HIPAA Notice of Special Enrollment Rights is now available'') and a brief description of the covered document if identification only by name would not reasonably convey the nature of the covered document.

(D) The internet website address, or a hyperlink to such address, where the covered document is available. The website address or hyperlink must be sufficiently specific to provide ready access to the covered document and will satisfy this standard if it leads the covered individual either directly to the covered document or to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document.

(E) A statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right.

(F) A statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right.

(G) A cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document.

(H) A telephone number to contact the administrator or other designated representative of the plan.

(ii) A notice of internet availability furnished pursuant to this section may contain a statement as to whether action by the covered individual is invited or required in response to the covered document and how to take such action, or that no action is required, provided that such statement is not inaccurate or misleading.

(4) *Form and manner of furnishing notice of internet availability.* A notice of internet availability must:

(i) Be furnished electronically to the address referred to in paragraph (b) of this section;

(ii) Contain only the content specified in paragraph (d)(3) of this section, except that the administrator may include pictures, logos, or similar design elements, so long as the design is not inaccurate or misleading and the required content is clear;

(iii) Be furnished separately from any other documents or disclosures furnished to covered individuals, except as permitted under paragraph (i) of this section; and

(iv) Be written in a manner calculated to be understood by the average plan participant.

(e) *Standards for internet website.*

(1) The administrator must ensure the existence of an internet website at which a covered individual is able to access covered documents.

(2) The administrator must take measures reasonably calculated to ensure that:

(i) The covered document is available on the website no later than the date on which the covered document must be furnished under the Act;

(ii) The covered document remains available on the website at least until the date that is one year after the date the covered document is made available on the website pursuant to paragraph (e)(2)(i) of this section or, if later, the date it is superseded by a subsequent version of the covered document;

(iii) The covered document is presented on the website in a manner calculated to be understood by the average plan participant;

(iv) The covered document is presented on the website in a widely available format or formats that are suitable to be both read online and printed clearly on paper;

(v) The content of the covered document can be searched electronically by numbers, letters, or words; and

(vi) The covered document is presented on the website in a widely available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) of this section.

(3) The administrator must take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual.

(4) For purposes of this section, the term *website* means an internet website, or other internet or electronic-based information repository, such as a mobile application, to which covered individuals have been provided reasonable access.

(f) *Right to copies of paper documents or to opt out of electronic delivery.*

(1) Upon request from a covered individual, the administrator must promptly furnish to such individual, free of charge, a paper copy of a covered document. The administrator may not charge for paper copies.

(2) Covered individuals must have the right, free of charge, to globally opt out of electronic delivery and receive only paper versions of covered documents. Upon request from a covered individual, the administrator must promptly comply with such an election.

(3) The administrator must establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2) of this section. The procedures are not reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election.

(4) The system for furnishing a notice of internet availability must be designed to alert the administrator of a covered individual's invalid or inoperable electronic address. If the administrator is alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable, the administrator must promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to a valid and operable secondary electronic address that had been provided by the covered individual, if available, or obtaining a new valid and operable electronic address for the covered individual) or treat the covered individual as if he or she made an election under paragraph (f)(2) of this section. If the covered individual is treated as if he or she made an election under paragraph (f)(2) of this section, the administrator must furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered notice of internet availability.

(g) *Initial notification of default electronic delivery and right to opt out.* The administrator must furnish to each individual, prior to the administrator's reliance on this section with respect to such individual, a notification on paper that covered documents will be furnished electronically to an electronic address; identification of the electronic address that will be used for the individual; any instructions necessary to access the covered documents; a cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document; a statement of the right to request and obtain a paper version of a covered document, free of charge, and an explanation of how to exercise this right; and a statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right. A notification furnished pursuant to this paragraph (g) must be written in a manner calculated to be understood by the average plan participant. The administrator is not required to furnish a paper copy of the initial notification of default electronic delivery for covered individuals who, prior to the first day of the first calendar year following date of publication of the final rule, have been receiving documents and information under Title I of the Act electronically pursuant to § 2520.104b–1(c).

(h) *Special rule for severance from employment.* At the time a covered individual who is an employee, and for whom an electronic address assigned by an employer pursuant to paragraph (b) of this section is used to furnish covered documents, severs from employment with the employer, the administrator must take measures reasonably calculated to ensure the continued accuracy and availability of such electronic address or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment.

(i) *Special rule for annual combined notices of internet availability.* Notwithstanding the requirements in paragraphs (d)(4)(ii) and (iii) of this section, an administrator may furnish one notice of internet availability that incorporates or combines the content required by paragraph (d)(3) of this section with respect to one or more of the following:

(1) A summary plan description, as required pursuant to section 104(b) of the Act;

(2) Any covered document or information that must be furnished annually, rather than upon the occurrence of a particular event, and does not require action by a covered individual by a particular deadline;

(3) Any other covered document if authorized in writing by the Secretary of Labor, by regulation or otherwise, in compliance with section 110 of the Act; and

(4) Any applicable notice required by the Internal Revenue Code if authorized in writing by the Secretary of the Treasury.

(5) Any covered document that must be furnished with annual enrollment materials, or must be included with materials that describe the plan benefits, if the notice of internet availability is provided at the time of annual enrollment.

(j) *Reasonable procedures for compliance.* The conditions of this section are satisfied, notwithstanding the fact that the covered documents described in paragraph (c) of this section are temporarily unavailable for a reasonable period of time in the manner required by this section due to technical maintenance or unforeseeable events or circumstances beyond the control of the administrator, provided that:

(1) The administrator has reasonable procedures in place to ensure that the covered documents are available in the manner required by this section; and

(2) The administrator takes prompt action to ensure that the covered documents become available in the manner required by this section as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the covered documents are temporarily unavailable in the manner required by this section.

(k) *Provisions of other laws.* Compliance with the disclosure requirements of this section is not determinative of compliance with any other provision of applicable Federal or State law. For example, a group health plan is a covered entity as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111–5, and the related regulations promulgated by the Department of Health and Human Services and, as such, is required to comply with HIPAA's provisions regarding the confidentiality and privacy of Protected Health Information.

(l) *Dates; severability.*

(1) This section is applicable the first day of the first calendar year following date of publication of the final rule.

(2) If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 4. The authority citation for part 2560 continues to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Section 2560.503–1 also issued under 29 U.S.C. 1133. Section 2560.502c–7 also issued under 29 U.S.C. 1132(c)(7). Section 2560.502c–4 also issued under 29 U.S.C. 1132(c)(4). Section 2560.502c–8 also issued under 29 U.S.C. 1132(c)(8).

■ 5. Section 2560.503–1 is amended by:

■ a. Revising the second sentence of paragraph (g)(1);

■ b. Revising the second sentence of the introductory text in paragraph (j).

The revisions read as follows:

§ 2560.503–1 Claims procedure.

* * * * *

(g) * * *

(1) * * *Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans) or 29 CFR 2520.104b–32 (for group health plans).

* * *

* * * * *

(j) * * *Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans) or 29 CFR 2520.104b–32 (for group health plans). * * *

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Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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