National Association of Benefits and Insurance Professionals
NABIP
Shaping the *future* of healthcare

September 21, 2026

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Electronic Disclosure by Group Health Plans Under ERISA; RIN 1210-AC35

Dear Assistant Secretary Aronowitz:

The National Association of Benefits and Insurance Professionals (NABIP) appreciates the opportunity to comment on the Department of Labor's (DOL) proposed rule, *Electronic Disclosure by Group Health Plans Under ERISA*, RIN 1210-AC35.

NABIP, formerly the National Association of Health Underwriters (NAHU), represents more than 100,000 licensed health insurance agents, brokers, consultants, general agents, and benefits professionals who serve consumers, employers, and families in every state. NABIP members assist employers of all sizes with purchase, design, administration, communication, and ongoing compliance obligations associated with employer-sponsored health and welfare benefits.

NABIP strongly supports the Department's decision to establish an additional default-electronic disclosure safe harbor for ERISA group health plans. The proposal represents a substantial and long-awaited modernization of rules that no longer reflect how employers, employees, benefit professionals, issuers, third-party administrators, and technology vendors communicate.

This proposal also responds directly to recommendations NABIP has made for many years. In 2019, our organization urged the Department not to limit its modernized electronic-disclosure safe harbor to retirement plans and asked that health and welfare plans be included. In 2024, NABIP recommended that policymakers replicate retirement-plan electronic-disclosure safe harbors for health and welfare plans, use an opt-out rather than opt-in standard, preserve paper upon request, and keep the rules flexible and evergreen. In 2025, NABIP again identified extension of the electronic-

disclosure safe harbor to health and welfare plans as a regulatory reform priority, particularly for small and midsized employers that otherwise must operate parallel paper and electronic systems.

We therefore commend the Department for proposing an optional notice-and-access framework that preserves existing delivery methods, makes electronic delivery the default for covered individuals, protects the right to paper, accommodates websites and mobile applications, and permits certain covered documents being identified through a combined annual Notice of Internet Availability (NOIA).

The Department has expressly encouraged commenters to include supporting facts, research, evidence, citations, data collection instruments, data sets, and detailed findings. NABIP is well positioned to assist the Department in developing a practical final rule because its members work directly with employers, carriers, third-party administrators (TPAs), enrollment platforms, Consolidated Omnibus Budget Reconciliation Act (COBRA) administrators, payroll vendors, and participants who must operationalize these disclosure requirements.

NABIP respectfully recommends several targeted modifications to make the safe harbor more useful, secure, understandable, and operationally workable for employers. That need is especially important in the current benefits environment, where employers are managing hybrid and remote workforces, multiple vendor platforms, rising benefits costs, increased cybersecurity expectations, and employee demand for fast, mobile-accessible information.

For these reasons, NABIP recommends that the Department broaden the safe harbor beyond group health plans, remove unnecessary paper-first barriers to adoption, streamline procedural requirements, permit appropriately secured direct delivery where privacy concerns do not require notice-and-access, and clarify service-provider reliance so the final rule functions as a practical modernization tool rather than another parallel compliance framework.

I. Permit Direct Email Delivery for General Documents That Do Not Contain Protected Health Information (PHI)

Proposed § 2520.104b-32 would require covered documents to be made available on a website or similar electronic repository. Unlike the 2020 pension-plan safe harbor, the proposal would not allow the covered document itself to be delivered directly by email. The Department explains that group health plan documents may contain protected health information and that transmission to an employer-assigned email account could expose sensitive information to employer monitoring. The Department expressly requests comments on whether a direct-email alternative should be permitted. 91 FR 46608-09.

NABIP agrees that participant-specific health information must be protected. We do not recommend allowing PHI to be indiscriminately transmitted through unsecured, employer-monitored email accounts.

The proposal, however, treats all group health plan disclosures as though they present the same privacy concerns. Many required disclosures are general plan communications that contain no PHI and no participant-specific information. Examples may include a general summary plan description (SPD), a general summary of material modifications (SMM), the Women's Health and Cancer Rights Act (WHCRA) notice, a general notice of Health Insurance Portability and Accountability Act (HIPAA) special-enrollment rights, and other materials distributed uniformly to a workforce.

NAHU identified this distinction in its 2019 comments, explaining that general disclosures and participant-specific communications raise materially different personalization and privacy considerations. It also observed that many general health and welfare plan disclosures do not contain participant-specific identifying information.

NABIP recommends that the final rule includes an optional direct-delivery method comparable to the pension safe harbor, subject to the following distinctions:

1. A general covered document that contains no PHI or participant-specific personal information may be furnished directly to a valid electronic address.
2. A participant-specific document may be delivered directly only through a method that satisfies HIPAA, Health Information Technology for Economic and Clinical

Health Act (HITECH), where applicable, and other applicable privacy and security requirements.

3. PHI should not be sent to an employer-assigned account unless the account is an appropriate address for the communication and all applicable privacy and security protections are satisfied.
4. Direct delivery should remain subject to invalid-address, paper-copy, and global opt-out protections.
5. The rule should remain technology-neutral and should not mandate a specific encryption product, email platform, authentication system, or security technology.

HIPAA does not categorically prohibit transmitting electronic protected health information (ePHI) through email. Its technical safeguards require covered entities and business associates to protect access, integrity, and transmission security and to select and document appropriate safeguards based on the circumstances. The Department of Health and Human Services (HHS) has similarly explained that ePHI may be sent over an electronic network when adequately protected.

A categorical prohibition on direct email would require a participant to receive an email, click a link, authenticate into a portal, locate the document, and download it even when the document contains no sensitive information. Allowing direct delivery of appropriate documents would improve actual receipt, reduce portal friction, and better fulfill the Department's objective of making disclosures useful.

II. Expand Annual Combined NOIAs and Coordinate with Treasury and HHS

NABIP strongly supports proposed § 2520.104b-32(i), which would allow an annual combined notice of internet availability (NOIA) for SPDs, certain annual documents, documents authorized by the Secretary, and documents furnished with annual-enrollment materials.

For years, NABIP has recommended consolidation of general health and welfare plan disclosures. Our 2019 and 2024 comments explained that employers and employees are burdened less by a lack of required information than by the number of separate notices, multiple distribution dates, varying formats, and differing delivery rules. NABIP recommended a single annual general notice, coordinated where appropriate with open enrollment and supported by a federal model.

The final rule should authorize the broadest legally permissible combined NOIA for documents that are:

- general rather than participant-specific;
- furnished annually or with enrollment materials;
- not triggered by an individual event; and
- not subject to an individual action deadline.

The Department should use its authority under Employee Retirement Income Security Act (ERISA) section 110 to identify additional eligible documents and publish an administratively maintained list. Where permitted under applicable statutory authority and coordinated Treasury, HHS, and DOL requirements, appropriate candidates may include general HIPAA special-enrollment information, and enrollment-related Summary of Benefits and Coverage (SBCs), subject to the timing and substantive requirements applicable to each notice.

Individualized or urgent materials—including COBRA election notices, adverse benefit determinations, appeal decisions, qualified medical child support communications, and other documents requiring action by a specific deadline—should remain subject to separate treatment. Without parallel Treasury and HHS treatment, employers may be unable to consolidate notices even if DOL finalizes a more flexible ERISA rule.

Interagency coordination is indispensable. Proposed § 2520.104b-32(k) states that compliance with the new safe harbor will not determine compliance with another provision of federal or state law. That reservation is understandable, but it may significantly limit the rule's practical value. A group health plan could comply with DOL's delivery safe harbor yet remain subject to another electronic-delivery standard under the Internal Revenue Code, the Public Health Service Act, or implementing guidance issued by Treasury, Internal Revenue Service, HHS, or the Centers for Medicare & Medicaid Services CMS.

NAHU specifically requested harmonization among DOL, Treasury, HHS, and other agencies in 2019.

NABIP recommends that DOL:

1. coordinate with Treasury and HHS before finalizing the rule;

2. issue joint or parallel guidance confirming when the same electronic-delivery process satisfies overlapping obligations;
3. develop a single model annual combined NOIA;
4. publish a cross-agency chart identifying documents eligible for combined treatment; and
5. establish a recurring process for adding notices to the combined framework as laws and technologies evolve.

Absent such coordination, employers—particularly small employers—may continue operating multiple delivery systems, undermining the proposal's principal objective.

III. Make the NOIA Flexible, Useful, and Participant-Tested

Proposed § 2520.104b-32(d) would prescribe two statements that must appear in every NOIA, restrict the notice largely to specified content, and generally require the NOIA to be furnished separately. The notice may state whether action is required, but that information is optional. 91 FR 46607-08.

NABIP supports the required core concepts: identification of the document, ready access, paper rights, the global opt-out, and a plan contact. We are concerned, however, that exact wording and a content-only rule could prevent employers and benefit professionals from producing communications that participants actually understand.

In 2019, we recommended that disclosures tell participants:

- why they should care;
- when they may need the information; and
- what practical next step they should take.

Those comments also encouraged layered electronic communications that present the essential point first and allow a participant to obtain additional detail. Our 2024 statements again called for participant focus groups, professional design work, and regular review of model notices.

The final rule should:

1. establish the proposed wording as a model safe harbor rather than the exclusive permitted language;
2. allow substantially equivalent language that communicates the required concepts clearly;
3. permit the plan name, plan logo, document purpose, action deadline, practical next step, customer-service link, accessibility assistance, language assistance, and authentication instructions;
4. allow related NOIAs to be combined when doing so would improve rather than diminish comprehension; and
5. publish a participant-tested model NOIA and model annual combined NOIA.

The Department should test the model with participants who lack specialized knowledge of ERISA or health insurance. Employers should not individually bear the cost or liability risk of conducting their own comprehension testing.

The required warning that a document may cease to be available after one year or after supersession should also be reconsidered. A clearer instruction might advise the participant that the document can be downloaded or saved for future reference. The current formulation may focus attention on document disappearance rather than the document's purpose.

IV. Establish Specific Protections for Claims and Appeals

The proposal would amend 29 CFR § 2560.503-1(g)(1) and (j) so the new notice-and-access safe harbor could be used for adverse benefit determinations and determinations on review.

This is not merely a technical conforming amendment. Claims and appeal notices are participant-specific, frequently contain sensitive information, and may begin short periods within which a claimant must act. The Department's economic analysis also assigns approximately $350.7 million of its estimated $401.7 million in annual savings to claims-procedure notices. Thus, the treatment of claims communications accounts for roughly 87% of the rule's projected annual savings and is economically central to the proposal.

Current claims rules require expedited handling in several contexts. Urgent care claims generally must be decided as soon as possible and no later than 72 hours, while certain urgent concurrent-care extension requests require notification within 24 hours. Existing rules also preserve oral notification in specified urgent circumstances with subsequent written or electronic notice.

NABIP supports electronic claims communications where they improve speed and access, but notice-and-access should not inadvertently delay a claimant's awareness of a denial, reduction, termination, or appeal deadline.

We recommend that the final rule requires the following for adverse benefit determinations and appeal decisions:

1. A NOIA subject line or prominent heading clearly identifying the communication as a claim or appeal decision.
2. A statement that action may be required and a conspicuous statement of the applicable deadline.
3. A direct link to the decision or a link to a login page that presents the decision immediately and prominently upon authentication.
4. A toll-free number or other rapid method for obtaining the decision and assistance.
5. Preservation of all existing oral, expedited, and timing requirements.
6. Prompt paper or alternative delivery if electronic access fails.

For urgent-care determinations, concurrent-care reductions or terminations, and similarly time-sensitive pre-service matters, DOL should either require direct delivery of the actual decision through an appropriate secure method or exclude notice-and-access alone from the safe harbor.

V. Clarify Reasonable Reliance on Issuers, TPAs, and Other Service Providers

The Department appropriately recognizes that issuers, TPAs, and other providers often establish and maintain the electronic systems through which group health plan disclosures are delivered. It also recognizes that an issuer may furnish ERISA disclosures under a written agreement with a plan sponsor. Nevertheless, the plan

administrator remains responsible for compliance and for prudently selecting and monitoring service providers.

This structure raises a significant practical concern for small and midsized employers. In many cases, the employer does not control the carrier portal, TPA system, COBRA platform, delivery logs, cybersecurity architecture, or participant-address database. The employer may have limited ability to test or correct those systems.

NABIP's 2024 comments emphasized that an entity controlling data and day-to-day administration should bear responsibility for related reporting and disclosure functions. NABIP also recommended a safe harbor for plan sponsors that make reasonable efforts but cannot obtain full cooperation from a service provider.

The final rule should provide that a plan administrator does not lose safe-harbor protection because of an isolated service-provider failure when the administrator:

- has a written agreement assigning relevant functions;
- prudently selected the provider;
- obtained reasonable contractual assurances or certifications;
- periodically monitored performance;
- did not know and reasonably should not have known of the failure; and
- took prompt corrective action upon learning of it.

Proposed § 2520.104b-32(j) already provides relief for temporary technical unavailability outside the administrator's control. Comparable protection should apply to other isolated vendor failures, such as an erroneous portal configuration, a failed batch delivery, a delayed transfer of electronic addresses, or a temporary failure to record a paper election.

Implementation readiness should be treated as a practical compliance issue, not merely a technology issue. Before relying on the safe harbor, employers and service providers may need to confirm that enrollment platforms, carrier portals, COBRA systems, payroll systems, and participant communication tools can support delivery of notices of internet availability, paper opt-outs, address changes, bounce-back tracking, document retention, authentication support, and corrective-action records. These operational dependencies are especially material for small and midsized employers that do not control the underlying systems.

DOL should also clarify the records that demonstrate reasonable compliance, including delivery reports, bounce-back reports, vendor certifications, opt-out records, portal-availability reports, and corrective-action documentation.

VI. Clarify Electronic Addresses, Adult Dependents, Invalid Addresses, and Severance

Proposed § 2520.104b-32(b) would permit use of an address furnished by a covered individual or an employment-related address assigned by an employer. It would also treat a dependent child aged 18 or older as a covered individual if the dependent provides an electronic address.

NABIP supports this flexible approach and recommends additional clarification.

First, an electronic address should be considered furnished to the employer or administrator when it is supplied through a benefits-enrollment platform, payroll system, issuer, TPA, COBRA administrator, broker-administered platform, or another authorized designee. A plan should be able to rely on that address until it receives actual notice that the address is invalid or the individual requests a change.

Second, the final rule should modify the plan's duties concerning adult dependents having provided an electronic address. Plans should be permitted to furnish documents through the participant's established method unless the adult dependent provides a separate address, requests confidential communication, the Plan has reason to know separate delivery is legally required, or applicable law requires separate delivery. A plan should not lose the safe harbor merely because an adult dependent does not independently provide contact information.

Third, proposed § 2520.104b-32(f)(4) should be interpreted as a bounce-back rule, not a requirement to prove that the participant opened or read every electronic communication. Plans should not be expected to monitor spam folders, read receipts, device use, mobile carrier filtering, or participant login frequency. An administrator should be required to act when it receives an actual undeliverable notice or otherwise has actual knowledge that the address is invalid.

Fourth, DOL should establish a severance safe harbor. An administrator should be deemed to satisfy § 2520.104b-32(h) when it:

1. requests or confirms a personal electronic address before or at separation;
2. explains that an employer-issued address may cease operating;
3. transfers contact and opt-out information to the relevant carrier, TPA, or COBRA administrator;
4. attempts delivery to an available secondary address; and
5. uses the last known postal address if no operable electronic address can be obtained.

This is particularly important for COBRA, claims, appeals, and other communications that may arise after the employer disables the individual's company email account.

VII. Preserve Paper Rights, Accessibility, and Technology-Neutral Standards

NABIP supports the proposal's free paper-copy right and global paper opt-out. These safeguards are consistent with NABIP's longstanding position that modernization should not deny paper to participants who need or prefer it.

NABIP also supports the proposed standards requiring documents to be searchable, printable, retainable, readable online, and protected against inappropriate disclosure. The inclusion of mobile applications and other electronic repositories within the definition of website is particularly appropriate.

The final rule should continue to use performance standards. It should not mandate a specific browser, application, file format, authentication tool, encryption product, or accessibility technology. These technologies evolve more quickly than regulations.

DOL should instead publish and periodically update voluntary best practices and model resources concerning:

- screen-reader compatibility;
- mobile accessibility;
- plain-language navigation;
- multilingual assistance;
- password recovery;
- alternative access for participants with limited digital literacy; and
- secure access outside the workplace.

This approach reflects NABIP's prior recommendation that accessibility be improved through current expertise, participant testing, and periodically updated guidance rather than inflexible design mandates.

VIII. Extend the Safe Harbor to Other Employee Welfare Benefit Plans

The Department requests comment on whether the safe harbor should extend beyond group health plans to other employee welfare benefit plans. 91 FR 46605.

NABIP recommends broader coverage.

NABIP's prior comments consistently referred to health and welfare plans, not only medical benefits. Employers commonly administer medical and non-medical welfare benefits through the same human resources systems, benefits platforms, advisors, enrollment processes, and communications. Many also use wrap SPDs that describe both health plans and non-health welfare benefits. If the final rule applies only to group health plans, those employers could not rely on the new electronic-disclosure safe harbor for the wrap SPD as a whole and the same limitation would apply to summary annual reports (SARs) and SMMs relating to welfare plans outside the group health plan scope. As a result, limiting the safe harbor in this way would significantly reduce its practical value and effectiveness and perpetuate the parallel-system problem that NABIP has asked policymakers to eliminate.

We recognize that life, disability, and other welfare benefits may have different disclosure and claims considerations. Those differences can be addressed through targeted exceptions or benefit-specific safeguards rather than categorical exclusion.

At a minimum, the final rule should:

1. extend the general safe harbor to additional welfare benefits where DOL determines the framework is immediately workable;
2. identify any documents requiring specialized treatment; and
3. commit to a prompt follow-up rulemaking for remaining welfare plans.

Because the safe harbor is optional, including additional welfare plans would not compel an administrator to adopt a method that does not fit its operations.

IX. Reevaluate the Regulatory Impact and Small-Employer Assumptions

NABIP agrees that default electronic delivery should produce substantial savings. The Department estimates approximately $402 million in annual materials and mailing savings and approximately $395 million in net annual savings after the first year.

Several assumptions nevertheless warrant further examination.

The Department assumes that:

- electronic delivery will increase to 90%;
- required documents are generally already available online;
- plans will not incur significant new website or portal costs;
- bounce-back monitoring is part of ordinary operations;
- a legal professional will require approximately two hours to review the final rule;
- preparation of each new notice template will require approximately one hour; and
- smaller plans will generally rely on a relatively limited number of TPAs and issuer entities for regulatory review and implementation support.

These assumptions may not fully capture:

- participant-specific document configuration;
- claims and appeal integrations;
- vendor contracting;
- implementation testing;
- record retention;
- paper-election coordination across vendors;
- adult-dependent address collection;
- cybersecurity review;
- portal authentication support;
- broker and consultant implementation work; or
- fixed costs borne by small employers.

The small-entity analysis compares compliance costs to total plan premiums. That comparison may understate the significance of fixed administrative expenses to a small employer because the cost is not necessarily absorbed proportionately through

premiums and may instead appear as a vendor fee, consulting charge, payroll-system cost, or internal staff burden.

Because the Department has specifically requested evidence and data, NABIP recommends that the final regulatory impact analysis separately address one-time implementation costs, recurring maintenance costs, vendor pass-through fees, and participant-support costs rather than if most plans can rely on existing systems without significant modification.

We encourage the Department to revise its analysis based on received stakeholder data. We also note that the proposal does not capture all potential savings that could result from consistent Treasury and HHS standards. True interagency harmonization could produce greater savings than a DOL-only rule.

X. Initial Notification and Applicability

NABIP supports the proposal to allow the initial notification to be delivered electronically to individuals who already receive ERISA documents electronically under the 2002 safe harbor. DOL reports that it is unaware of problems arising from similar electronic transition communications permitted during the COVID-19 national emergency.

The final rule should extend this principle to individuals for whom the employer or administrator already maintains a valid electronic address used for established employment or benefits communications, even if the plan has not documented technical compliance with every element of the 2002 safe harbor. Requiring a paper initial notice before an employer may use an electronic safe harbor would create a meaningful adoption barrier and would reintroduce paper processes precisely where the rule is intended to modernize administration. For many employers, particularly those with distributed, remote, hybrid, or multi-state workforces, that step may discourage adoption rather than facilitate it. The initial notice should still explain electronic delivery, paper-copy rights, and the global opt-out, but the rule should permit that notice to be delivered electronically when the employer or administrator already has a valid electronic address and an established electronic relationship with the covered individual.

The Department proposes an applicability date on the first day of the first calendar year following publication of the final rule. Because use of the safe harbor is optional, DOL

should allow early voluntary reliance after a reasonable period following publication while permitting other plans to adopt it on their own implementation schedule.

Conclusion

NABIP strongly supports the Department's decision to modernize electronic disclosure for ERISA group health plans. The proposed rule fulfills a policy objective NABIP and NAHU have advanced repeatedly: extending a default-electronic, paper-opt-out safe harbor to health and welfare benefits while preserving participant access to paper when needed or preferred.

Most importantly, the final rule should extend the safe harbor to health and welfare benefits practical in real-world benefits administration, remove the separate paper initial-notification requirement, and streamline the procedural and content requirements so employers are not forced to maintain parallel delivery systems.

NABIP appreciates the Department's consideration of these recommendations and looks forward to working with the Employee Benefits Security Administration on a final rule that improves participant communication, reduces unnecessary administrative burdens, protects sensitive information, preserves meaningful paper choice, and provides clear compliance certainty for employers and their service providers.

Sincerely,

Michael Andel
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National Association of Benefits and Insurance Professionals