



June 6, 2011

Submitted electronically to:  
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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
200 Constitution Avenue NW  
Washington, DC 20210

Re: RIN 1210-AB50  
E-Disclosure RFI

Ladies and Gentlemen:

AARP<sup>1</sup> commends the Department of Labor (DOL or Department) for issuing this request for information on employee benefit plans' use of electronic disclosure. Since 2002 – the year in which the DOL issued its electronic disclosure regulations – more people have access to, and are using, computers and/or other personal electronic devices. However, AARP believes that the Department must be mindful of demographic groups that do not have access to or use computers and/or personal electronic devices. AARP also recognizes electronic disclosures can provide cost-savings in time, money and personnel costs to plans, providers and employers, and that for some employees it is a decided preference to request and obtain ERISA materials exclusively by electronic means. AARP supports expansion of the current standards under ERISA for the request and distribution of required disclosures and wider use of electronic means to distribute employee benefit plan disclosures, notices, and other plan documents with the recognition that any changes to the electronic disclosure regulations must balance the competing interests.

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<sup>1</sup> AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families. Nearly half of our members are employed, full or part-time, with many working for employers which provide employee benefit plans. AARP has always advocated for individual participants' abilities to obtain complete, accurate, understandable, meaningful and timely information to make informed decisions concerning their employment and benefits.

## **The Purpose of Disclosures Under ERISA**

Congress concluded that among the safeguards which would lead to the protection of employee benefits was “the disclosure and reporting to participants and beneficiaries of financial and other information . . . .” ERISA § 2, 29 U.S.C. § 1001; *see also* Legislative History of the Employee Retirement Income Security Act of 1974, Vol. III, at 4668 (stating that the “availability of this information will enable both participants and the Federal Government to monitor the plans’ operations”).<sup>2</sup> This language in ERISA’s legislative declaration demonstrates Congress’s obvious and unremarkable intent that disclosures that meet ERISA’s statutory and regulatory requirements, ERISA §§ 101-104, 29 U.S.C. §§ 1021-1024; *see also* 29 C.F.R. §§ 2520.102-2 & 102-3; 29 C.F.R. §§ 2520.104b-1 – 104b-4, can equip participants with the information they need to make informed decisions concerning their benefits and employment. The flip side is that when employees fail to receive accurate required information, Congress’s carefully crafted reporting and disclosure scheme and the protections which flow from that scheme are seriously weakened. Consequently, AARP submits that a plan must follow procedures designed to advance the effectiveness of electronically transmitted disclosures and related plan notices and documents so that participants have every reasonable opportunity to protect their rights.

Revisions to the Department’s current electronic disclosure safe harbor must take into account the potential for adverse individual consequences in circumstances in which disclosure requirements do not fulfill their intended purpose of informing plan participants. A case in point is *Amschwand v. Spherion Corp.*, No. H-02-4836, 2005 U.S. Dist. Lexis 21007, at \*4 (S.D. Tex. Aug. 24, 2005), *aff’d*, 505 F.3d 342 (5th Cir. 2007), in which casual and ineffective approaches to ERISA plan disclosure irreparably harmed a plan participant and his beneficiaries. In *Amschwand*, plaintiff’s husband was employed by Spherion Corporation prior to losing his battle with cancer. *Id.* at \*4. Due to his deteriorating health, Amschwand took a year and a half leave from Spherion, during which time the company changed group life insurance carriers. *Id.* at \*4-5. Under the new Aetna insurance plan coverage was conditioned upon satisfaction of the Active Work Rule. *See Amschwand v. Spherion Corp.*, 505 F.3d 342, 344 (5th Cir. 2007), *cert. denied*, 128 S. Ct. 1493 (2008). This rule required that “‘if [the employee] happen[s] to be ill or injured and away from work on the date [the employee’s] coverage would take effect, the coverage will not take effect until [the employee] return[s] to full-time work for one full day.’” *See id.* at 344 n.1 (quoting Aetna’s Summary of Coverage).

Following open enrollment, a representative from Spherion’s human resources department orally confirmed to Amschwand that he was properly enrolled in Aetna’s new plan. *See id.* at 344. Recognizing his deteriorating condition, Amschwand requested additional written assurances of coverage. *See id.* It was undisputed that despite many such requests,

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<sup>2</sup> We note that ERISA’s legislative findings do not mention cost-effective plan administration or minimizing administrative and financial burdens. Accordingly, these goals are secondary to the Act’s stated policies – the principal of which is the “protection of employee benefit rights.” *Cf.* ERISA § 2, 29 U.S.C. § 1001 (reviewing the necessity for enactment to protect participants and beneficiaries).

Spherion failed to disclose written details of the Policy's terms. *See id.* Consequently, Amschwand remained unaware of the Active Work Rule and he never returned from medical leave. *See id.* Despite Amschwand's repeated attempts prior to his death to obtain the information necessary to ensure his coverage, Aetna denied coverage following his death on account of his failure to meet the Active Work Rule. *See id.*

Following Amschwand's death and Aetna's denial of death benefits, plaintiff sought equitable "make-whole" relief under ERISA § 502(a) (3). On account of the limited relief courts believed was available under ERISA, plaintiff was able to recover a total of \$55,760 calculated at \$85 per day for the duration of Spherion's failure to disclose the plan documents that Amschwand had sought. The amount awarded pales in comparison to the \$426,000 that would have resulted had Amschwand satisfied the Active Work Rule by going to work for a single day so as to entitle him to continued coverage.

Although the Supreme Court's recent decision in *Cigna Corp. v. Amara*, No. 09-804, 2011 U.S. LEXIS 3540, expanding the scope of equitable relief available under ERISA § 502(a)(3), would most likely result in a very different outcome than occurred in *Amschwand* if similar facts were presented, having to resort to litigation to protect their rights does not help participants and beneficiaries or the plan. Instead, ensuring participants' receipt of complete, accurate, understandable, meaningful and timely information to make informed decisions concerning their employment and benefits most effectively protects their rights and obligations.

Another example of a potential issue is where participants either do not receive or read an electronic disclosure in a timely fashion. (See AARP's Response to Question 6 detailing the percentage of individuals who access their email accounts infrequently). If participants do not receive and/or read electronic disclosures in a timely fashion, they may be precluded from taking action to protect their rights. *See, e.g., Edwards v. Briggs & Stratton Retirement Plan*, 2011 U.S. App. LEXIS 8895 (7th Cir. 2011) (where administrative appeal to the plan from a claim denial was approximately eleven days late, court would not permit lawsuit to proceed for failure to exhaust administrative remedies); *Northlake Reg'l Med. Ctr. v. Waffle House Sys. Empl. Benefit Plan*, 160 F.3d 1301 (11th Cir. Ga. 1998) (upholding as reasonable a 90-day limitations period for filing suit provided in the plan); *Watts v. Bellsouth Telecomm.*, 316 F.3d 1203 (11th Cir. 2003) (if appeal was mandatory, then late filing of 16 days was not excused); *Monast v. Johnson & Johnson*, 680 F.Supp. 2d 299 (D. Mass. 2010) (upholding termination of benefits due to physician's late filing of additional requested information for continuation of participant's disability benefits).

AARP's interest in the Department's initiative to reconsider electronic disclosure rules and the views expressed in this letter are influenced and informed by a belief that the outcome in *Amschwand* and other similar cases are inequitable, and that the Department should make every reasonable effort to devise rules designed to avoid similar consequences.

### **AARP's Framework for The Use of Electronic Disclosures**

AARP submits that the types of documents subject to ERISA electronic disclosure rules should be divided into two categories. On two separate appendices attached to this letter, we have listed the categories of documents to which we refer. See Appendices A & B. We have separated the documents into those which are general plan disclosure and notification documents (Appendix A) and those which require participants to decide whether to take action (such as whether to appeal a benefit denial), contain personal information (such as health benefit denials) or financial information (such as 401(k) individual benefit statements),<sup>3</sup> or may permit participants to make informed decisions concerning their benefits and employment, ranging from protesting, looking for new employment, or saving more. (Appendix B).

Under the Pension Protection Act, many of the required notices must be “reasonably accessible” to the recipient if the notice is made electronically, which is a concept similar but not identical to the requirement under the IRS regulations that the recipient have the “effective ability to access” the electronic medium used to provide the notice. *See* Section 508 of the PPA, amending ERISA § 105. In the Technical Explanation of the PPA, prepared by the staff of the Joint Committee on Taxation, the Committee explains, by way of example, that regulations relating to the furnishing of pension benefit statements, “could permit current benefit statements to be provided on a continuous basis through a secure plan web site for a participant or beneficiary who has access to the web site.” *See* Joint Committee on Taxation, *Technical Explanation of H.R. 4, the “Pension Protection Act of 2006,” as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006* (JCX-38-06), August 3, 2006. AARP interprets this language as a midpoint between the DOL and IRS regulations in effect at the time of the enactment of the PPA. *Compare* 29 C.F.R. § 2520.104b-1(c) *with* Treas. Reg. § 1.401(a)-21. We suggest that Appendix B documents are similar in nature to the individual benefit statements referred to in the Joint Committee on Taxation’s report.

“Basic Disclosures” are listed on Appendix A. We believe that a routine electronic distribution of the Appendix A documents in the ordinary course of business should be permissible for all individuals for whom the plan or its designated service provider has an e-mail address. For those participants who have the ability to effectively access documents furnished in electronic format 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, there will

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<sup>3</sup> The more confidential the information is the more security is needed. For example, in the health and disability benefit context, the electronic transmission of individually identifiable health information outside secure systems poses a threat to privacy. Very sensitive information may be involved in communications regarding health and disability benefits and encryption of this information will be necessary. Moreover, electronic notice to claimants can be problematic in the area of health and disability claims because a claimant may need to access important information at a time when a computer is not available to him or her. *See* Responses to Questions 1 & 2 on computer access. Related privacy issues are raised regarding financial information.

be an assumption that distribution and receipt is made in the normal course of business. (See 29 CFR § 2520.104b-1(c)(2)(i)). However, if a participant requests to receive the disclosure by paper, requests a paper copy at work or wants to print out a paper copy at the employer's site, the plan must provide the disclosure by mail or paper and the employer should not take any adverse action against the participant, including charging for printing. For participants, beneficiaries, and other persons who are entitled to documents under Title I of ERISA and who either have affirmatively consented to receive documents electronically or for whom the plan has on file a valid non-employer connected (secondary) email address, electronic disclosures are permissible. (See 29 CFR § 2520.104b-1(c)(2)(ii)(A)).<sup>4</sup> However, if the plan determines that the secondary e-mail address is invalid (such as on account of having received a "bounce-back" message or on another reasonable basis), then the plan must either obtain a valid email address or deliver the disclosures by ordinary mail.

"Additional Disclosures and Notices of Benefit Determinations" are listed on Appendix B. We believe that with respect to Appendix B listed documents, enhanced assurances of receipt should be applicable to any electronic delivery. Such enhanced assurances could include, but are not limited to, read-receipt documentation, recipient-initiated access, specific programs to verify receipt and opening of documents, or some other secure and reliable means of receipt verification. AARP's reason for proposing a greater level of assurance of receipt for the Appendix B documents stems from AARP's view of the potential adverse individualized consequences that may flow from failure of actual receipt, and therefore receipt of those items should not be presumed.

Participants and beneficiaries for whom the plan does not have email addresses must receive disclosures by paper. Thus, they should be deemed to have opted in receipt of paper document disclosures.

Participants and beneficiaries should have the right to opt out and receive only paper disclosures by request at any time. If a participant requests to receive the disclosure by paper, requests a paper copy at work or wants to print out a paper copy at the employer's site, the plan must provide the disclosure by mail or paper and the employer should not take any adverse action against the participant, including charging for printing.

AARP submits that electronic disclosure regulations should require a timely re-noticing or re-delivery with respect to Appendix B disclosures for all electronic disclosure recipients for whom there is no record that they have accessed a given document or at least accessed a website that furnishes access to the document within seven (7) days after electronic

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<sup>4</sup> Any proposed rules on plans' use of electronic disclosures should make it clear that communications to participants cannot be counted on as adequate communications to the spouse, beneficiary or alternate payee. Any proposed rule should also specifically state that participants cannot consent for beneficiaries or alternate payees, and participants' receipt of disclosures on behalf of beneficiaries is not receipt by the beneficiary. Accordingly, any proposed regulation should require that (1) the spouse, beneficiary or alternate payee must make the opt-in decision separately from the participant, and (2) the plan make required disclosures directly to the spouse, beneficiary or alternate payee with appropriate receipt confirmation.

distribution and seven (7) days prior to the deadline for an action or response related to the given notice or other timing parameters as appropriate. Here again, AARP's view stems from our view of the potential adverse individualized consequences that may flow from failure of actual receipt and the relative ease with which the sender may duplicate the electronic distribution to selective recipients.

AARP urges the Department to take into account applicable privacy and confidentiality issues that are likely to arise in connection with electronic access to ERISA plan documents and to the extent those issues are present we believe that appropriate positive assertion of identity measures should be required.

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In order to assist the Department, AARP is also responding to each separate question, as appropriate, even though some of the responses may be duplicative of our general statement.

### **Question 1.**

**What percentage of people in this country has access to the Internet at work or home? Of this percentage, what percentage has access at work versus at home? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)?**

According to a joint report prepared by the Commerce Department's Economic and Statistics Administration and the National Telecommunications and Information Administration, *Exploring the Digital Nation: Home Broadband and Internet Adoption in the United States* (Nov. 2010) (ESA-NTIA study), [www.ntia.doc.gov/.../ESA\\_NTIA\\_US\\_Broadband\\_Adoption\\_Report\\_11082010.pdf](http://www.ntia.doc.gov/.../ESA_NTIA_US_Broadband_Adoption_Report_11082010.pdf), almost 30 percent (30%) of U.S. households used the Internet during 2009, most by broadband. According to this study, nearly 25 percent (25%) of U.S. households had no Internet access at home; however, nearly 8 percent (8%) of U.S. households had Internet access from a location other than home – either at work or public access like a library.

Access to the Internet does vary by demographic groups, particularly age, race, socio-economic status, and location. According to the ESA-NTIA study, whites and Asians are the most likely ethnic groups to have Internet access. Younger people, people with higher incomes, and people who lived in more urban areas were also more likely to have broadband access. Internet access tends to decrease as age increases. Home broadband access drops from 68.2 percent (68.2%) for 45-64 year olds to 39.9 percent (39.9%) for those 65 and older.

AARP's surveys confirm these findings. One-third of total respondents stated they did not use a computer; slightly over half (51%) of the respondents over age 65 did not use a computer while twenty-two percent (22%) of the respondents between ages 50-64 did not. Sixty percent (60%) used a computer at home while twenty-six percent (26%) used a computer at work. See *Internet Use Among Midlife and Older Adults: An AARP Bulletin Poll* at 1, 2 (Dec. 2009), [http://assets.aarp.org/rgcenter/general/bulletin\\_Internet\\_09.pdf](http://assets.aarp.org/rgcenter/general/bulletin_Internet_09.pdf). A slightly more recent survey indicated that more than one-quarter (27%) of respondents over age 50 did not access the Internet, with the majority (55%) of Hispanic adults over age 50 not accessing the Internet. See *Social Media and Technology Use Among Adults 50+* at 3, 6 (June 2010), <http://assets.aarp.org/rgcenter/general/socmedia.pdf>.

## **Question 2.**

**What percentage of participants and beneficiaries covered by an ERISA plan has access to the Internet at work or home? Of this percentage, what percentage has access at work, at home, or both? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)? What percentage of participants and beneficiaries uses the Internet to access private information such as personal bank accounts?**

AARP has not tracked, nor have we been able to locate, information regarding Internet usage by participants covered by ERISA plans. However, data collected by the Pew Internet and American Life Project suggest that the majority of Americans up to age 64 bank online, even in the baby boomer generation. Approximately 56 percent (56%) of older boomers, those ages 55-64, said they did online banking. Again, the number of persons using online banking measured by Pew dropped after age 65. Only 44 percent (44%) of 65-73 year-olds and 35 percent (35%) of the 74+ population bank online. *See Generations 2010* at 2, 11, 12, 13, 15 (Dec. 2010), [http://pewInternet.org/~media/Files/Reports/2010/PIP\\_Generations\\_and\\_Tech10.pdf](http://pewInternet.org/~media/Files/Reports/2010/PIP_Generations_and_Tech10.pdf). An AARP survey corroborates these findings. AARP's telephone survey found that 34 percent of respondents performed banking online, with 43 percent (43%) of persons between 50-64 banking online but only 17 percent (17%) of people over 65 do so. *See Internet Use Among Midlife and Older Adults: An AARP Bulletin Poll* at 1, 5 (Dec. 2009), [http://assets.aarp.org/rgcenter/general/bulletin\\_Internet\\_09.pdf](http://assets.aarp.org/rgcenter/general/bulletin_Internet_09.pdf). Gender does not seem to be an indicator of online banking use, but income is, with 68 percent (68%) of persons earning over \$75,000 banking online compared with only twelve percent (12%) earning under \$25,000 banking online. *Id.* at 5-6.

The Pew study had another relevant finding for the purposes of this request for information. Less than half of Americans of any age said they get financial information online. Interestingly, the greatest reported usage was for those ages 65-73, at 44 percent (44%). For boomers, those ages 45-64, the usage was approximately 41 percent (41%). For Millennials and Generation X-ers, usage was even smaller. About 38 percent of Millennials, those ages 18-33, said they get financial information online. For Generation-X, those ages 34-45, 38 percent (38%) of respondents said they obtained financial information online. *See Generations 2010* at 2, 10, 13, 15 (Dec. 2010), [http://pewInternet.org/~media/Files/Reports/2010/PIP\\_Generations\\_and\\_Tech10.pdf](http://pewInternet.org/~media/Files/Reports/2010/PIP_Generations_and_Tech10.pdf).



### **Question 3.**

**What percentage of pension benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of plans (*e.g.*, single-employer plans versus multiemployer plans, defined benefit pension plans versus defined contribution pension plans, *etc.*), types of participants and beneficiaries (*e.g.*, active, retired, deferred vested participants) and types of disclosures (*e.g.*, all required title I disclosures versus select disclosures).**

AARP does not have statistics or information to provide to the Department that is relevant to the question.

### **Question 4.**

**What percentage of employee welfare benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of welfare plans (*e.g.*, health, disability, *etc.*), types of participants and beneficiaries (*e.g.*, active employees, retirees, COBRA Qualified Beneficiaries, *etc.*) and types of disclosures (*e.g.*, all required title I disclosures versus select disclosures).**

AARP does not have statistics or information to provide to the Department that is relevant to the question.

### **Question 5.**

**What are the most common methods of furnishing information electronically (*e.g.*, e-mail with attachments, continuous access Web site, *etc.*)?**

AARP does not have statistics or information to provide to the Department that is relevant to the question.

## **Question 6.**

**What are the most significant impediments to increasing the use of electronic media (e.g., regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, etc.)? What steps can be taken by employers, and others to overcome these impediments?**

Even if participants and beneficiaries use the Internet, one impediment to increasing the use of electronic disclosures is the frequency of their use. Twenty-three percent (23%) of respondents in an AARP survey said that they use the Internet only every few days or less. *See Internet Use Among Midlife and Older Adults: An AARP Bulletin Poll* at 1, 6-7 (Dec. 2009), [http://assets.aarp.org/rgcenter/general/bulletin\\_Internet\\_09.pdf](http://assets.aarp.org/rgcenter/general/bulletin_Internet_09.pdf). Older and less affluent respondents use the Internet less frequently. *Id.* at 6-7. Thus, electronic disclosures upon which individuals must take action could potentially not be read for some time. *See* Response to Question 10, *infra* as well as AARP's Framework at 4-6.

## **Question 7**

**Is there evidence to suggest that any increase in participant and beneficiary access to, and usage of, the Internet and similar electronic media in general equates to an increased desire or willingness on the part of those participants and beneficiaries to receive employee benefit plan information electronically? If so, what is it?**

In 2007 AARP surveyed more than 1500 people concerning 401(k) fees, and among the questions asked was one inquiring how they would prefer to receive information about fees. *See 401(k) Participants' Awareness and Understanding of Fees* at 7, 34, (June 2007), [http://assets.aarp.org/rgcenter/econ/401k\\_fees.pdf](http://assets.aarp.org/rgcenter/econ/401k_fees.pdf). Paper materials (77%) were the most widely desired vehicle for receiving fee-related information, regardless of age. Surprisingly, the difference between persons in the age 25-49 age cohort and the age 50 and older cohort preferring to receive information about fees by hard copy was only 2.3% (75.8% versus 78.1%). *Id.* at 34. Respondents also expressed interest in receiving information about fees from other media as well. Specifically, three in ten (30%) respondents preferred to receive information about fees via the Internet, one in four (24%) expressed an interest in receiving this information through in-person group sessions, and nearly as many (23%) expressed a preference to learn about plan fees during in-person one-on-one counseling.

In 2008, AARP surveyed over 2,100 people comparing model fee disclosure forms developed by the Department and AARP. *See Comparison of 401(k) Participants' Understanding of Model Fee Disclosure Forms Developed by the Department of Labor and AARP* (September 2008), [http://assets.aarp.org/rgcenter/econ/fee\\_disclosure.pdf](http://assets.aarp.org/rgcenter/econ/fee_disclosure.pdf). Seventy-five percent (75%) of respondents expressed a preference for receiving fee information through the mail. *Id.* at 25. Other formats such as e-mail or a provider's website rated 31% and 26%, respectively. *Id.* Demographic groups more likely to prefer receipt of information about fees by mail include (1) persons over age 50 versus persons under 50

(85% versus 69%), (2) women more than men (77% versus 72%), (3) respondents with a high school degree or less and those with some college education compared with those with at least a bachelor's degree (79% and 81% versus 68%), and (4) respondents whose annual household income is less than \$50,000 versus those who earn more (83% versus 70%). *Id.*

AARP submits the conclusion to be drawn from these surveys is that individuals prefer the option to receive paper disclosures.

### **Question 8**

**Are there any new or evolving technologies that might impact electronic disclosure in the foreseeable future?**

AARP does not have any information to provide to the Department that is relevant to the question.

### **Question 9.**

**Should the Department's current electronic disclosure safe harbor be revised? If so, why? If not, why not?**

Yes. First, more people have access to computers than in 2002 when the DOL first permitted electronic disclosures. The percentage of households with home Internet access was 50.4% in 2001 versus 68.7% in 2009. *See Internet Use in the United States: October 2009*, Appendix Table. A. (Households with a Computer and Internet Use: 1984 to 2009), <http://www.census.gov/population/www.socdemo/computer/2009.html>; *see also* Response to Question 1. The majority of Internet users use broadband service with about five percent (5%) using dial up service. ESA-NTIA Study, at 5, [www.ntia.doc.gov/.../ESA\\_NTIA\\_US\\_Broadband\\_Adoption\\_Report\\_11082010.pdf](http://www.ntia.doc.gov/.../ESA_NTIA_US_Broadband_Adoption_Report_11082010.pdf). *See* Response to Question 1. Second, computer programming has become more sophisticated so that it is both easier and cheaper to deal with security issues and to ensure that participants have received notice and opened a disclosure document.

## **Question 10.**

**If the safe harbor should be revised, how should it be revised? Please be specific.**

AARP submits that the types of documents subject to ERISA electronic disclosure rules should be divided into two categories. On two separate appendices attached to this letter, we have listed the categories of documents to which we refer. See Appendices A & B. We have separated the documents into those which are general plan disclosure and notification documents (Appendix A) and those which require participants to decide whether to take action (such as whether to appeal a benefit denial), contain personal (such as health benefit denials) or financial information (such as 401(k) individual benefit statements), or may permit participants to make informed decisions concerning their benefits and employment, ranging from protesting, looking for new employment, or saving more. (Appendix B).

“Basic Disclosures” are listed on Appendix A. We believe that a routine electronic distribution of the Appendix A documents in the ordinary course of business should be permissible for all individuals for whom the plan or its designated service provider has an e-mail address. For those participants who have the ability to effectively access documents furnished in electronic format 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, there will be an assumption that distribution and receipt is made in the normal course of business. (See 29 C.F.R. § 2520.104b-1(c)(2)(i)). However, if a participant requests to receive the disclosure by paper, requests a paper copy at work or wants to print out a paper copy at the employer’s site, the plan must provide the disclosure by mail or paper and the employer should not take any adverse action against the participant including charging for printing. For participants, beneficiaries, and other persons who are entitled to documents under Title I of ERISA (*e.g.*, retirees, deferred vested participants, alternate payees) and who either have affirmatively consented to receive documents electronically or for whom the plan has on file a non-employer connected (secondary) email address, electronic disclosures are permissible. (See 29 C.F.R. § 2520.104b-1(c)(2)(ii)(A)). However, if the plan determines that the secondary e-mail address is invalid (such as on account of having received a “bounce-back” message or on another reasonable basis), then the plan must either obtain a valid email address or deliver the disclosures by ordinary mail.

“Additional Disclosures and Notices of Benefit Determinations” are listed on Appendix B. We believe that with respect to Appendix B listed documents, enhanced assurances of receipt should be applicable, such as read-receipt documentation, recipient-initiated access, specific computer programs to verify receipt and opening of documents, or some other secure and reliable means of receipt verification. See also AARP’s Response to Question 17 delineating requirement for rights of participants and beneficiaries to choose to receive disclosures by paper copy without fear of retaliation. AARP’s reason for proposing a greater level of assurance of receipt for the Appendix B documents stems from AARP’s view of Congressional intent that participants need this information to make informed

decision concerning their benefits and employment. *See Purposes of Disclosures Under ERISA at 2-4, supra.* Failure of actual receipt of Appendix B documents may result in adverse individualized consequences such as failing to take appropriate action, and therefore receipt of those items should not be presumed.

Participants and beneficiaries for whom the plan does not have email addresses must receive disclosures by paper. Thus, they should be deemed to have opted for receipt of paper document disclosures.

AARP submits that electronic disclosure regulations should require a timely re-noticing or re-delivery with respect to Appendix B disclosures for all electronic disclosure recipients for whom there is no record that they have accessed a given document or at least accessed a website that furnishes access to the document within seven (7) days after electronic distribution and seven (7) days prior to the deadline for an action or response related to the given notice or other timing parameters as appropriate. Here again, AARP's view stems from our view of Congressional intent to provide participants with the information that they need to prevent adverse individualized consequences that may flow from failure of actual receipt and the relative ease with which the sender may duplicate the electronic distribution to selective recipients. *See Purposes of Disclosures Under ERISA at 2-4, supra.*

See AARP's Framework For the Use of Electronic Disclosures at 4-6, *supra* for a complete explanation.

### **Question 11.**

**Should a revised safe harbor have different rules or conditions for different types of employee benefit plans (e.g., pension versus welfare plans)? If so, why and what differences?**

No. The issue is not the type of plan but the type of information required in the disclosures. Thus, health care disclosures that contain personal information should require heightened security measures such as encryption and the use of a secure website with user identification and passwords. Financial information such as a 401(k) account balance statement or an individual pension benefit statement should use similar security features. However, for example, summary plan descriptions for all types of plans can be distributed in the same manner. See Appendices A & B for different types of documents.

**Question 12.**

**Should a revised safe harbor have different rules or conditions for different types of disclosures (e.g., annual funding notice, quarterly benefit statement, COBRA election notice, etc.)? If so, why and what differences?**

Yes. See Response to Question 10. See AARP's Framework For the Use of Electronic Disclosures at 4-6, *supra* for a complete explanation.

**Question 13.**

**Should a revised safe harbor have different rules or conditions for different recipients entitled to disclosures (active employees, retirees, COBRA Qualified Beneficiaries, etc.)? If yes, why, and how should the rules or conditions differ?**

Yes. However, the rules or conditions should be based on whether they are employed with the plan sponsor and whether they have provided affirmative consent to the receipt of electronic disclosures and provided the necessary electronic access information, *i.e.*, email address. As we pointed out in our Framework discussion, most recipients who are employed with the plan sponsor would receive disclosures electronically for general notices and disclosures; for most other disclosures, we expect that they would also receive electronic disclosures with appropriate safeguards. Retirees, deferred vested participants, alternate payees, and COBRA recipients would receive paper disclosures unless they affirmatively consented to electronic disclosure or the plan already has an outside email address (again, with the appropriate safeguards). See AARP's Framework For the Use of Electronic Disclosures at 4-6, *supra* for a complete explanation.

#### **Question 14.**

**To what extent should the Department encourage or require pension and welfare benefit plans to furnish some or all disclosures required under Title I of ERISA through a continuous access Web site(s)? In responding to this question, please address whether and how frequently participants and beneficiaries should be notified of their ability to access benefit information at the Web site(s) and the most appropriate means to provide such notice. For example, should participants and beneficiaries receive a monthly notification of their ability to access benefit information or should they receive a notification only when an ERISA-required disclosure is added to the Web site? How should such notifications be furnished (e.g., paper, e-mail, etc.)? Please also address what steps would be needed to ensure that participants and beneficiaries understand how to request and receive paper copies of the disclosures provided on the Web site(s).**

Although continuous access Web sites provide significant security and 24/7 access for participants, AARP does not believe that such Web sites should be mandated. Given the rapid changes in computer programming and continuing evolution of novel types of media, the focus should be on the attributes that Web sites provide, rather than the Web sites themselves. On this issue, we believe that plans (and employers) need flexibility to explore new technology. We suggest that Advisory Opinions and other forms of guidance can be used to inform employers whether a new format or technology meets the electronic disclosure requirements.

Participants should be routinely notified whenever new information or a new document is made available with respect to the participant/beneficiary's plan participation. Additionally, the plan should electronically make available a periodic cumulative summary of documents distributed within a given period; AARP suggests a calendar year quarterly basis (*e.g.*, April 15, July 15, October 15, January 15). As part of this cumulative notice, a plan could inform the participants that the Web site is available to them.

Notifications should be furnished in the same manner that participants are furnished actual documents and by such other competent means as are regularly employed by the employer or plan administrator. Participants and beneficiaries should be regularly apprised by all reasonable means how to request and receive paper copies of disclosures provided on the web site(s). Each electronic disclosure should include prominent information notifying recipients how to obtain paper copies, including who to contact.

### **Question 15.**

**Who, as between plan sponsors and participants, should decide whether disclosures are furnished electronically? For example, should participants have to opt into or out of electronic disclosures? See Question 26.**

See AARP's Framework For the Use of Electronic Disclosures at 4-6, *supra* for a complete explanation.

### **Question 16.**

**Should a revised safe harbor contain conditions to ensure that individuals with disabilities are able to access disclosures made through electronic media, such as via continuous access Web sites? If so, please describe the conditions that would be needed. Also, please identify whether such conditions would impose any undue burdens on employee benefit plans, including the costs associated with meeting any such conditions. What burden and difficulty would be placed on employees with disabilities if the Web sites and/or other electronic communication were not accessible?**

The most common conditions requiring reasonable accommodations under the Americans with Disabilities Act are hearing impairments, vision impairments and learning disabilities. These individuals may not be able to access a continuous access Web site. In *American Council of the Blind v. Michael Astrue, Commissioner of the Social Security Administration*, 2009 U.S. Dist. LEXIS 97599 (N.D. Cal. 2009), the Court ruled that Section 504 of the Rehabilitation Act of 1973 requires the Social Security Administration (SSA) to provide blind and visually impaired SSI recipients, retirement benefits recipients and representative payees a choice of receiving notices and other communications in the alternative formats of Braille, navigable Microsoft Word CDs, or a telephone call from an SSA representative. SSA is also required to take steps to ensure that persons with disabilities know of these alternative formats.

AARP suggests that individuals with disabilities, regardless of whether they are currently working for the employer, must be provided with an alternative format to electronic disclosures, if they so desire. We recognize that some individuals may already receive reasonable accommodations from their employer, such as a personal reader or other assistive technologies which may be sufficient, especially when there is a "brick and mortar" establishment linked to where the disclosures will be provided, i.e., the workplace. Without such alternatives, individuals with disabilities may not know that they have lost certain rights such as the ability to appeal a benefit denial.

Plans would have to determine whether enabling magnifiers and other types of assistive technologies are more cost-effective as compared with alternative formats. See, e.g., Microsoft Accessibility Technology for Everyone, *Guide for Individuals with Vision Impairments*, <http://www.microsoft.com/enable/guides/vision.aspx>. One cost issue can be



the frequency of needed software or other updates. However, whether requiring assistive technologies pose an undue burden on the plan or plan sponsor depends very much on individual circumstances – size of firm, etc.

AARP suggests that the current Section 508 standards provide a good starting place for determining appropriate standards for electronic disclosures in the private sector. *See* <http://www.section508.gov/index.cfm?fuseAction=stdsdoc#Definitions>. In addition, the Access Board, a federal agency, is working to update these regulations to make them more robust.

AARP suggests that this issue and its ramifications are appropriate for discussion with the EEOC.

### **Question 17.**

**If a plan furnishes disclosures through electronic media, under what circumstances should participants and beneficiaries have a right to opt out and receive only paper disclosures?**

Participants and beneficiaries should have the right to opt out and receive only paper disclosures by request at any time. If a participant requests to receive the disclosure by paper, requests a paper copy at work or wants to print out a paper copy at the employer's site, the plan must provide the disclosure by mail or paper and the employer should not take any adverse action against the participant, including charging for printing.

See AARP's Framework For the Use of Electronic Disclosures at 4-6, *supra* for a complete explanation.

### **Question 18.**

**The Department's current regulation has provisions pertaining to hardware and software requirements for accessing and retaining electronically furnished information. In light of changes in technology, are these provisions adequate to ensure that participants and beneficiaries, especially former employees with rights to benefits under the plan, have compatible hardware and software for receiving the documents distributed to their non-work e-mail accounts?**

Although AARP does not have information to provide the Department on hardware or software, we note that by requiring enhanced assurances of receipt for certain documents and by requiring the plan to determine whether a secondary e-mail (non-work) address is invalid (such as on account of having received a “bounce-back” message or on another reasonable basis) and, if so, to take additional steps, alleviates some of the concerns over incompatible hardware and software.

AARP believes that with changes in technology, both ease of delivery and enhanced steps to ensure receipt go hand-in-hand. Thus electronic delivery should be accompanied by the requirement of a timely re-noticing or re-delivery with respect to certain disclosures for all electronic disclosure recipients for whom there is no record that they have accessed a given document, or at least accessed a website that furnishes access to the document, within seven (7) days after electronic distribution and seven (7) days prior to the deadline for an action or response related to the given notice or other timing parameters. Here again, AARP's view stems from our view of the fundamental purpose of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt and the relative ease with which the sender may duplicate the electronic distribution to selective recipients. These additional requirements should alleviate some of the concern over incompatible hardware and software.

## **Question 19.**

**Some have indicated that the affirmative consent requirement in the Department's current electronic disclosure safe harbor is an impediment to plans that otherwise would elect to use electronic media. How specifically is this requirement an impediment? Should this requirement be eliminated? Is the affirmative consent requirement a substantial burden on electronic commerce? If yes, how? Would eliminating the requirement increase a material risk of harm to participants and beneficiaries? If yes, how? See section 104(d)(1) of E-SIGN.**

As AARP has set forth in its framework for the use of electronic disclosures, those recipients with a connection to the plan sponsor's work place would have the opportunity to opt out of receiving electronic disclosures – that is, there would not be an affirmative consent requirement for current employees. Retirees and other persons with no current connection with the plan sponsor's work place pose a more difficult problem and additional safeguards are needed. Without affirmative consent, the plan would not necessarily have the correct email address of those participants and beneficiaries. In addition, individuals may change their email addresses and not inform the plan of this change, resulting in non-receipt of an electronic disclosure. Finally, individuals may be without access to their computer accounts or may be incapacitated. All of these scenarios could result in a loss of participant or beneficiary rights which could materially increase the risk of harm to participants and beneficiaries.<sup>5</sup>

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<sup>5</sup> E-SIGN provides that any signature or document required by law to be in writing cannot be denied legal effect solely because the signature or record is in electronic form. E-SIGN, § 101(a)(1). By its terms, E-SIGN does not require anyone to use or accept electronic communications, nor does it alter any other legal requirements. But, it does provide that electronic versions of signatures and documents can satisfy legal requirements for signatures and written documents, as long as certain conditions are met and certain consumer protections are observed. *See id.* §§ 101(c)-(e), 104. E-SIGN also gives federal agencies the authority to issue regulations or guidance interpreting E-SIGN's requirements as they relate to the agency's other rules. *Id.* § 104(b)(1). However, one of the limitations on that authority is a requirement that the agency make a finding that the electronic methods selected are "substantially equivalent" to the requirements imposed on their non-electronic counterparts. *Id.* § 104(b)(2)(c)(ii)(I).

## **Question 20.**

**In general, the E-SIGN Act permits electronic disclosure of health plan materials but does not apply to cancellation or termination of health insurance or benefits electronically. Are there special considerations the Department should take into account for group health plan disclosures (including termination of coverage and privacy issues)?**

Any disclosures which either require participants to decide whether to take action (such as whether to appeal a health benefit denial), contain personal information (such as health benefit denials) or may permit participants to make informed decisions concerning their benefits and employment, such as obtaining additional health coverage or transferring to a spouse's coverage could be sent electronically, but are adequate only if they also include the added protections set out in AARP's general framework for the use of electronic disclosures. AARP believes that with respect to Appendix B listed documents enhanced assurances of receipt should be applicable, such as read-receipt documentation, recipient-initiated access, specific programs to verify receipt and opening of documents, or some other secure and reliable means of receipt verification. AARP's reason for proposing a greater level of assurance of receipt for the Appendix B documents stems from AARP's view of the fundamental purposes of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt, and therefore receipt of those items should not be presumed. *See Purposes of Disclosures Under ERISA at 2-4, supra.*

## **Question 21.**

**Many group health plan disclosures are time-sensitive (e.g., COBRA election notice, HIPAA certificate of creditable coverage, special enrollment notice for dependents previously denied coverage under the ACA, denials in the case of urgent care claims and appeals). Are there special considerations the Department should take into account to ensure actual receipt of time-sensitive group health plan disclosures?**

Yes. We believe that with respect to Appendix B listed documents enhanced assurances of receipt should be applicable, such as read- receipt documentation, recipient-initiated access, or some other secure and reliable means of receipt verification. AARP's reason for proposing a greater level of assurance of receipt for the Appendix B documents stems from the Association's view of the fundamental purposes of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt, and therefore receipt of those items should not be presumed. AARP believes that electronic disclosure regulations should require a timely re-noticing with respect to Appendix B disclosures for all electronic disclosure recipients for whom there is no record that they have accessed a given document or at least accessed a website that furnishes access to the document within seven days after electronic distribution and seven days prior to the deadline for an action or response related to the given notice, or such other timing parameters as seem appropriate. Here again, AARP's view stems from the Association's view of the fundamental purposes

of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt and the relative ease with which the sender may duplicate the electronic distribution to selective recipients. *See Purposes of Disclosures Under ERISA at 2-4, supra.*

Issues surrounding a plan's failure to determine whether a participant or beneficiary has received and opened a disclosure should also be considered in any revision of the claims regulation (such as the impact on statute of limitations and exhaustion requirements) as well as other regulations in which disclosures may impact rights.

### **Question 22.**

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

Yes. AARP believes that with changes in technology, both ease of delivery and enhanced steps to ensure receipt go hand-in-hand. AARP's suggestion of enhanced assurances of receipt for documents listed in Appendix B should be applicable, such as read-receipt documentation, recipient-initiated access, specific programs to verify receipt and opening of documents, or some other secure and reliable means of receipt verification. AARP's reason for proposing a greater level of assurance of receipt for the Appendix B documents stems from AARP's view of the fundamental purposes of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt, and therefore receipt of those items should not be presumed. *See Purposes of Disclosures Under ERISA at 2-4, supra.* AARP also believes that electronic disclosure regulations should require a timely re-noticing with respect to Appendix B disclosures for all electronic disclosure recipients for whom there is no record that they have accessed a given document or at least accessed a website that furnishes access to the document within seven days after electronic distribution and 7 days prior to the deadline for an action or response related to the given notice, or such other timing parameters as seem appropriate. Here again, AARP's view stems from our view of the fundamental purposes of ERISA and the potential adverse individualized consequences that may flow from failure of actual receipt and the relative ease with which the sender may duplicate the electronic distribution to selective recipients. *See Purposes of Disclosures Under ERISA at 2-4, supra.*

These requirements should mitigate any issues with electronic disclosures getting caught in spam filters. See also Response to Question 21.

### **Question 23.**

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

Some plans use read- receipt documentation, recipient-initiated access, or some other secure and reliable means of receipt verification to confirm that a participant received a time-sensitive notice that requires a participant response.

**Question 24.**

**What are current practices for ensuring that the e-mail address on file for the participant is the most current e-mail address? For example, what are the current practices for obtaining and updating e-mail addresses of participants who lose their work e-mail address upon cessation of employment or transfer to a job position that does not provide access to an employer provided computer?**

AARP does not have information to provide to the Department that is relevant to this question.

**Question 25.**

**What costs and benefits are associated with expanding electronic distribution of required plan disclosures? Do costs and benefits vary across different types of participants, sponsors, plans, or disclosures? Are the printing costs being transferred from plans to plan participants and beneficiaries when information is furnished electronically?**

AARP does not have information to provide to the Department that is relevant to the first two questions. We note that if a participant requests to receive the disclosure by paper, requests a paper copy at work or wants to print out a paper copy at the employer's site, the plan must provide the disclosure by mail or paper and the employer should not take any adverse action against the participant, including charging for printing. For electronic disclosures to be most beneficial to participants and beneficiaries, and to limit printing costs, the documents should be able to be manipulated so that the individual can find and use the information most relevant to him or her. Clearly, those participants and beneficiaries with no work connection who choose to print electronic disclosures will absorb printing costs.

### **Question 26.**

**If electronic disclosure were the default method for distributing required plan disclosures, and assuming “opting out” were an option, what percentage of participants would likely “opt-out” of electronic disclosure in order to receive paper disclosures? Should participants be informed of increased plan costs, if any, attendant to furnishing paper disclosures at the time they are afforded the option to opt out or into an electronic disclosure regime?**

AARP does not have specific information to provide to the Department that is relevant to the first question. However, as noted earlier, survey results make it clear that a paper option is the preferred form. However, we know that action does not always follow stated preferences. Should the Department permit plans to inform participants of increased plan costs due to the use of paper disclosures (assuming that the plan could verify these costs and be able to inform individuals as to their share of the costs), the information would need to be done in an objective non-threatening manner. We would suggest language like the following:

Plan XYZ prefers to send out required plan disclosures because it is more cost-effective and efficient. However you have the right to receive your plan disclosures by paper.

### **Question 27.**

**Do participants prefer receiving certain plan documents on paper rather than electronically (e.g., summary plan descriptions versus quarterly benefit statements), and what reasons are given for such preference? Would this preference change if participants were aware of the additional cost associated with paper disclosure?**

See answer to Question 7. AARP’s survey did not ask the last question.

### **Question 28.**

**What impact would expanding electronic disclosure have on small plans? Are there unique costs or benefits for small plans? What special considerations, if any, are required for small plans?**

AARP does not have information to provide to the Department that is relevant to this question.

### **Question 29.**

**Is it more efficient to send an e-mail with the disclosure attached (e.g., as a PDF file) versus a link to a Web site? Which means of furnishing is more secure? Which means**

**of furnishing would increase the likelihood that a worker will receive, read, retain and act upon the disclosure?**

AARP does not have information to provide to the Department that is relevant to this question.

**Question 30.**

**Employee benefit plans often are subject to more than one applicable disclosure law (e.g., ERISA, Internal Revenue Code) and regulatory agency. To what extent would such employee benefit plans benefit from a single electronic disclosure standard?**

AARP believes that if all statutory objectives can be met, then uniformity of electronic disclosure, to the extent possible, is highly beneficial for plans and beneficiaries. Consistency with format would be helpful to participants.

\* \* \* \* \*

**Corresponding Rights And Responsibilities For Plans Using Electronic Disclosures**

ERISA § 104(b) states that the plan administrator must furnish certain documents if a participant or beneficiary requests them in writing. The regulations do not specify that an e-mail or other electronic communication from a participant constitutes a written request. AARP submits that for plans that choose to make disclosures electronically the regulations should recognize that a participant e-mail request or other electronic participant communication meets the “request in writing” requirement in the statute.<sup>6</sup> *Compare* 29 C.F.R. § 2520.104b-1(b).

Moreover, the regulation provides no requirement for a plan to provide the plan administrator’s email address to which a written request may be made. Accordingly, for plans that choose to make any disclosure electronically, the e-mail address of the plan administrator should be provided in the summary plan description and other documents in which the plan administrator’s contact information is provided.

Finally, AARP submits all participants, regardless of the manner by which they receive other disclosures, may make written requests for ERISA documents via electronic means. The plan must provide the document to the participant in the method the participant has requested; however, if a plan receives a request electronically, then the plan may presume that a response electronically will meet its obligation unless the participant requests

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<sup>6</sup> A similar amendment should be made concerning the Department’s written request for documents to plans. *See* 29 C.F.R. § 2520.104a-8.



otherwise. If a plan provides a document electronically, there should be no cost to the participant/beneficiary. Providing a link to a website at which the document is accessible suffices to meet the request.

AARP believes that changes in technology that improve the ease of delivery should also enhance the timeliness of delivery. AARP submits that if a plan furnishes the summary plan description and/or summary of material modifications electronically, then the SMM or updates to the SPD should be provided at least thirty (30) days before the changes are effective. Although thirty days (30) is less time than explicitly stated in the statute, *see* 29 U.S.C. § 1024(b)(1) (summary of material modifications to be provided 210 days after close of plan year regardless of effective date), *but see Dall v. Chinet Co.*, 33 F. Supp. 2d 26, 33-34 (D. Me. 1998), *aff'd*, 201 F.3d 426 (1<sup>st</sup> Cir. 1999) (court required SMM to be provided 30-days in advance per 502(c)), AARP believes that participants should be provided with updates more promptly if electronic disclosure of the SPD or SMM is used.

## CONCLUSION

Participants and beneficiaries must be able to obtain complete, accurate, understandable, meaningful and timely information to make informed decisions concerning their employment and benefits. With appropriate safeguards, electronic disclosures can effectively accomplish these objectives while providing cost-savings to employers and plans.

AARP appreciates having the opportunity to provide its views on the use of electronic disclosures in employee benefit plans. If you have any questions, please do not hesitate to contact Thomas Nicholls at 202/434-3760 or Mary Ellen Signorille at 202/434-2072.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner  
Legislative Counsel and  
Director of Legislative Policy  
Government Affairs

## Appendix A

### BASIC DISCLOSURES<sup>7</sup>

Summary Plan Description (SPD)  
Summary of Material Modification (SMM)  
Summary Annual Report (SAR)  
Plan Documents  
General Notice of Preexisting Condition Exclusion  
Women's Health and Cancer Rights Act (WHCRA) Notices  
Notice of Transfer of Excess Pension Assets to Retiree Health Benefit Account  
Annual Funding Notice  
Multiemployer Plan Summary Report  
Multiemployer Plan Notice of Potential Withdrawal Liability  
Notice of Failure to Meet Minimum Funding Standards  
Notice of Funding-based Limitation

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<sup>7</sup> The documents listed on Appendices A & B were analyzed from the DOL's own lists. See U.S. Dep't of Labor, Employee Benefits Security Administration, *Reporting and Disclosure Guide for Employee Benefit Plans* (Rev. Oct. 2008).

## **Appendix B**

### **ADDITIONAL DISCLOSURES AND NOTICES OF BENEFIT DETERMINATIONS**

Notification of Benefit Determination (claims notices or “explanation of benefits”)  
Summary of Material Reduction in Covered Services or Benefits  
Initial COBRA Notice  
COBRA Election Notice  
Notice of Unavailability of COBRA  
Notice of Early Termination of COBRA Coverage  
Certificate of Creditable Coverage  
Individual Notice of Period of Preexisting Condition Exclusion  
Notice of Special Enrollment Rights  
Wellness Program Disclosure  
Medical Child Support Order (MCSO) Notice  
National Medical Support (NMS) Notice  
Periodic Pension Benefit Statement  
Statement of Accrued and Nonforfeitable Benefits  
Suspension of Benefits Notice  
Domestic Relations Order (DRO) and Qualified Domestic Relations Order (QDRO) Notices  
Notice of Significant Reduction in Future Benefit Accruals  
Section 404(c) Plan Disclosures  
Notice of Blackout Period for Individual Account Plans  
Qualified Default Investment Alternative Notice  
Automatic Contribution Arrangement Notice  
Notice of Right to Divest