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Via U.S. First Class Mail and Electronic Mail (*e-ORI@dol.gov*)

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Claims Procedure Regulations for Plans Providing Disability Benefits Examination

RIN No.: 1210-AB39

Regulation: 29 C.F.R. §2560.503-1

Dear Deputy Assistant Secretary Hauser:

I represent many claimants in ERISA-governed disability benefit disputes. I submit the following comments on the Department of Labor's proposal to delay the applicability of the Final Rule amending the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. I have seen dozens of claimants who have been denied needed benefits, merely because they have not mastered the technicalities and gamesmanship often encountered in the administration of disability benefit plans, particularly those underwritten and administered by insurance companies. I offer my comments from the perspective of plan participants.

The Final Rule merely incorporates many of the practices that courts have imposed on insurers of employer sponsored disability plans for many years. The Final Rule will require those practices uniformly throughout the United States. If insurers and other administrators of disability plans followed these practices, claimants would be better able to navigate the claims process and obtain fairer results without the need to hire lawyers to embark on litigation to obtain needed benefits to which they are entitled under ERISA disability plans.

It is deeply troubling to those of us who have followed the process of promulgating the Final Rule that the Department now seeks to delay their effective date. The rules were finalized after an extensive notice and comment period that provided 60 days and yielded numerous comments from various stakeholders. Insurers and plans -- and the organizations that represent them -- had ample opportunity to contribute their views, and they availed themselves of that opportunity. Many industry comments argued that there were cost issues associated with implementing the rules, but these arguments were unsupported by relevant data. Nonetheless, the

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request by industry for more time to adjust to the new rules was honored by the Department in already significantly delaying the effective date.

Despite that extensive process, the Department now states that other information that could have been contributed during the proper notice and comment period was not. The ERISA participants and their representatives have no way to respond to this input, which likely includes the same sort of speculation about costs that was submitted during the comment period, since it is not available to the public. Worse yet, the industry will collect data in a way that will be hidden from the public, and the Department will decide how to protect participants' rights in a fair adjudication of their disability claims based on this secret information. The very purpose of a notice and comment period is to make the rulemaking process transparent to all stakeholders. A proposed delay for some secretive "Star Chamber" proceeding violates the letter and spirit of the Administrative Procedures Act, 5 U.S.C.A. § 553.

The regulations in question were adopted to implement ERISA § 503, 29 U.S.C. § 1133, which provides that every employee benefit plan shall "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a *full and fair review* by the appropriate named fiduciary of the decision denying the claim." Any delay in the implementation of the "full and fair review" regulations, developed through a robust rulemaking procedure, in favor of secret rulemaking is contrary to the substance of the statute intended to be implemented.

I am skeptical of any argument by the insurance industry that the implementation of the Final Rule would dramatically increase premiums. In fact, such arguments are an admission that premiums are now set with the expectation that legitimate claims will not be paid because the process is unfair and actually supports the need for a fairer claims process. In fact, ERISA participants would welcome a slight increase in premiums to avoid illusory coverage. Since disability insurers have had many years of experience to price disability coverage, there is no need to delay the Final Rule so that insurers can figure out how to price disability coverage.

The effective date of the regulations should not be delayed, since the reason for doing so violates the letter and purpose of the Administrative Procedures Act and the "full and fair review" provisions of ERISA.

Thank you considering my comments.

Very truly yours,



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