

# PUBLIC SUBMISSION

<b>Received:</b> October 18, 2017
<b>Status:</b> Pending_Post
<b>Tracking No.</b> 1k1-8zak-r6m0
<b>Comments Due:</b> October 27, 2017
<b>Submission Type:</b> Web

**Docket:** EBSA-2015-0017

Claims Procedure for Plans Providing Disability Benefits; Extension of Applicability Date

**Comment On:** EBSA-2015-0017-0291

Claims Procedure: Plans Providing Disability Benefits

**Document:** EBSA-2015-0017-DRAFT-0363

Comment on FR Doc # 2017-22082

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## Submitter Information

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## General Comment

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

Re: 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 write to offer comments on the Department's proposed delay of the final regulations for amending the claims procedure regulations applicable to disability benefit plans. I am interested in the content of these regulations because, as a partner at McMahan Law Firm, LLC, I primarily litigate ERISA disability, health and life insurance claims on behalf of individuals who have been wrongfully denied their benefits. I also have a Social Security disability practice and am certified as a specialist in Social Security Disability Law by the National Board of Social Security Disability Advocacy. I am a 1996 graduate of Washington University School of Law and am licensed in Georgia, Tennessee and Illinois. I have been a leader in prominent organizations such as the American Association for Justice (AAJ), Tennessee Association of Justice (TAJ) and the Tennessee Bar Association (TBA). I am past-Chair of AAJ's Disability law Section, a former member of TAJ's Board of Governors, past-Chair of TBA's Disability Law Section and past-President of the Chattanooga Trial Lawyers Association (CTLA). AAJ, TAJ, TBA and CTLA are all associations of lawyers who advocate on behalf of disabled or injured individuals. Additionally, I have lectured regularly on disability issues to other attorneys in multiple jurisdictions.

The Department's proposed delay of the final regulations is startling and makes me wonder seriously about the transparency in the rule-making process. The Department finalized rules after an extensive notice and comment period which provided 60 days and generated numerous comments from a variety of sources. More specifically, insurance companies and plans, along with various entities that represent them, vigorously marshalled their arguments. A good number of those comments alleged there were high costs associated with implementation of the rules. However, those comments were speculative and not supported by relevant data. Significantly, quite a few industry comments requested additional time to modify their internal procedures in accordance with the new rules. The Department honored this by considerably delaying the effective date.

Now it has been discovered that other input is being relied upon - material that could and should have been contributed during the proper notice and comment period but was not. The ERISA participants and their representatives have no way to respond to this input because it has not been made available. This is extremely concerning. Why is this post-notice and comment information more important than what was obtained during the notice and comment period itself? Why did the Department hold meetings with industry representatives without the content of these meetings (and letters from certain congressmen) being substantively disclosed? Why is the industry referencing a "confidential" study predicting premium increases? Why has this study not been made available and why is there only a 15-day notice and comment period? As the Department well knows, this provides insufficient time to make a FOIA request to

uncover what is influencing this process.

It gets worse. The industry study the Department is now proposing makes this process opaque. The data collected by the industry will be hidden from the public - members of whom are the very individuals whose rights are affected. How is this process fair? How is it trustworthy? It appears to be designed to allow the industry to massage facts in its favor. How can ERISA participants and their representatives effectively comment or provide their own "study," since they are not in possession of the data and do not have the time to do so if they were?

It is wrong to assume the industry's assessment that group disability benefits will increase by 5-8%. While premiums might rise in Vermont in response to a mental health parity statute it does not mean enhanced process-based rules would cause similar effects. However, even if premiums would be increased to some small degree it would be to avoid what the industry now provides: illusory coverage. Right now ERISA participants are paying something for nothing and paying something for something would be an improvement.

The process surrounding the proposed delay of the regulations is opaque. It damages the sense of trust and fairness that should attend the rule-making process. The effective date of the regulations should not be delayed.

Thank you for considering my comments,

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