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Via electronic mail transmission to e-ORI@dol.gov

Timothy D. Hauser
Deputy Assistant Secretary
United States Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room M-5655
200 Constitution Avenue NW
Washington D.C. 20210

Re: Claims Procedure Regulations for Plans Providing Disability Benefits
Examination
RIN No.: 1210-AB39
Regulation: 29 CFR § 2560.503-1

Dear Deputy Assistant Secretary Hauser:

I write to comment on a proposed delay in implementation of amendments to claims-procedure regulations for ERISA-governed disability benefit plans. These regulations interest me greatly because, in my law practice, I focus on representing claimants in disputes respecting these sorts of claims. I have considerable experience in how these regulations impact claimants and the claims process, as I have represented both claimants and institutional defendants in ERISA disability disputes over my 30-year legal career.

As I understand it the currently operative effective date of the amendments, January 1, 2018, may be delayed until April 1, 2018. The stated basis for the delay is to allow for the insurance industry and related interests to conduct a study of the likely cost implications of the amendments. The industry's goal, as I understand it, is to demonstrate that the cost-benefit analysis DOL performed in connection with the initial enactment of the amendments was somehow faulty.

DOL finalized the amendments only after a 60-day notice-and-comment period that involved a great many comments from various stakeholders. Very well represented were insurers and ERISA plans, and the organizations that represent them. Cost issues associated with implementing the amendments constituted a primary focus of their submissions—which were highly speculative, and rarely supported by valid and legitimate data. And many industry comments asked for more time to adjust to the new rules, a request that DOL has already honored by significantly delaying the effective date at the outset.

The input that is to be facilitated by the proposed additional delay could have been

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contributed during the proper notice-and-comment period. Moreover, neither ERISA participants and beneficiaries nor their representatives have any way to respond to this input, since it is not being made publically available. We are not told why this post-notice-and-comment information is any more valid than what was submitted during the notice-and-comment period itself. But it is clear that industry representatives met with DOL personnel, and that the industry and certain members of Congress sent letters—the content of which are not transparently disclosed. And, the notably short 15-day notice-and-comment period for the proposed delay doesn't allow sufficient time to make a FOIA request to learn what is influencing this process.

The contemplated industry study also appears to involve degraded transparency; it will be hidden from the public. That notwithstanding, DOL proposes to revisit the question of how (and perhaps whether?) to protect participants' and beneficiaries' statutory and regulatory rights to reasonable procedures in the adjudication of their disability claims. Whether by design or merely in effect, the contemplated delay will permit an entirely unscientific massaging of facts to favor one set of interests over another. And participants and beneficiaries cannot effectively comment or provide their own "study," since they are not in possession of the source data, and could not muster the resources to process it even if they were.

As I understand it the contemplated study is expected to presage a significant premium increase attributed to the amendments, a proposition that currently available facts render quite unlikely. And to the extent that premiums would have to be increased to avoid illusory coverage, ERISA participants and beneficiaries would likely welcome this (it benefits no one to pay marginally lower premiums for a product that is ultimately worthless); nor would it further burden public programs. Even assuming a delay would prevent such an increase, costs will not outweigh benefits even in a worst-case scenario.

Delaying the effective date of the amendments makes no sense, and the contemplated process lacks transparency and undermines any sense of trust and fairness. I ask that the effective date for the amendments—already significantly delayed at the industry's behest—remain January 1, 2018.

Thank you for considering my input.

Very truly yours,



Richard Johnston

RJ/tlv