

From: Jonathan M. Feigenbaum [mailto:jonathan@erisaattorneys.com]
Sent: Wednesday, October 18, 2017 5:40 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1201-AB39

RIN 1210-AB39 [e-ORI@dol.gov](mailto:ORI@dol.gov)
Timothy D. Hauser,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration,
Department of Labor.

Dear Mr. Hauser,

I am requesting that the Secretary of Labor not delay the effective date of the Final ERISA claims regulations adopted on December 19, 2016. The late objectors (ERISA plans, their advocates and insurance companies and their advocates) are seeking to undo the regulations after the fact without going through the rule making process. These parties had ample opportunity to voice their concerns and to provide data supporting their new allegations on cost and other purported challenges by the new regulations.

The Secretary of Labor finalized rules after an extensive notice and comment period that resulted in numerous comments from various stakeholders, including attorneys representing participants, participants, ERISA plans, insurance companies and their advocates and ERISA plan organizations. Many comments by the insurance companies and ERISA plan made arguments without empirical support. The Secretary weighed those comments before crafting final rules. Now, the ERISA plan organizations, insurance companies and those aligned with those groups are seeking to undo the regulations without following the Administrative Procedure Act (APA) of 1946 (5 U.S.C. §551 et seq., other statutes and court decisions which together guide regulation making and undoing.

Regarding the delay, limited information from the Secretary's office suggests that the final rules are under reconsideration, but there is a lack of transparency from the Secretary. The Secretary has not advised the exact nature of the information causing the reconsideration and why the information was not provided to the Secretary and evaluated during the comment period. In addition, limited disclosures suggest that ERISA plan advocates and insurance representatives met with employees of the Secretary. Of concern is that the delay seems predicated on a "confidential" study that predicts an increase in premiums. The basis for the purported increase is not known.

I made a FOIA request for information as described in part in the prior paragraph. I made the request on August 22, 2017, and as of this email, I have received no information other than an acknowledgement. The FOIA tracking number assigned to my inquiry is EBSA tracking number 838959. The date of completion keeps moving into the future and is now listed as October 27, 2017.

Transparency and following rules is essential to our system of government. Please do not delay the implementation date.

Thank you for your consideration.

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Thank you – Jonathan M. Feigenbaum, Esquire.