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October 24, 2017

Via Electronic Submission

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
RIN No.: 1210-AB39
Regulation: 29 C.F.R. §2560.503-1

Dear Deputy Assistant Secretary Hauser,

I write as an insurance law attorney whose practice includes litigating group disability benefit claims under the Employee Retirement Income Security Act (“ERISA”) on behalf of employees and participants.

I am deeply concerned regarding the Department of Labor’s (“Department”) proposed delay of the final regulations amending the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. The purported rationale for the delay—to address the concerns from insurance companies and employee benefit plans that the amended regulations would result in cost increases—makes no sense, as the costs concerns from insurers and plans were already raised during the previous rule making process and addressed by the Department. Following an exhausting notice and comment period where the Department carefully considered the concerns of ERISA participants, insurers and plan, the Department concluded that the costs would be minimal to enact the amended regulations.

As a result, there is no valid reason for further delaying the application of the final regulations. Instead, it appears that the insurance companies want to perform an end run around the rulemaking process by delaying the application of the amended regulations indefinitely. The insurance companies provide no rationale of why it could only provide “limited data sources” during the entire rulemaking process, and provide no reason why they can provide “such data

could be provided by the industry” only now. The industry’s “commitment to provide this data” is made under a cloak of confidentiality and secrecy, with no transparency of the process to be provided to ERISA participants. Given the conditions that the industry is putting on providing data and its refusal to explain its purported failure to provide such data previously, the industry’s “commitment to provide this data” rings hollow. The industry has provided its concerns that amending the final regulations would result in cost increases during the rulemaking process, and the Department has already concluded that any cost increases would be minimal.

For these reasons, I urge the Department to reject the request to delay or extend the applicability date, and continue to apply the final amended regulations for ERISA disability claims filed on or after January 1, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "B H K", with a long horizontal stroke extending from the "B".

Brian H. Kim
BOLT KEENLEY KIM LLP