



CHICAGO + BAY AREA

1050 MARINA VILLAGE PKWY.  
SUITE 105  
ALAMEDA, CA 94501  
TEL: 510.992.6130  
FAX: 510.280.7564

**October 25, 2017**

**Sent Via E-mail:** [e-ORI@dol.gov](mailto: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

**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,

Over the past twelve years I have represented hundreds of individuals in their claims for disability benefits under ERISA-governed disability plans at all stages in the process (claim filing, pre-litigation appeals, district court litigation, and Circuit court appeals). In addition to being on the front lines, I regularly research, write, and speak about ERISA disability benefit claim issues. For example, every week I review and publish short summaries on recent ERISA case decisions, many of which arise in the disability benefit context. I'm also a regular contributing author for the ERISA Litigation (Bloomberg BNA) book and the Employee Benefits Law (Bloomberg BNA) book.

I am writing because the Department's proposed delay of the final regulations raises serious issues regarding transparency in the rule-making process. The Department finalized rules 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, were vocal in the process. Many of industry comments suggested that there were cost issues associated with implementing the rules. Those comments were highly speculative and not supported by any relevant data. The industry comments asked for more time to adjust to the new rules and the Department honored this request by significantly delaying the effective date.

Now we are told that other input is being relied upon - information that could have been contributed during the proper notice and comment period but somehow was not. The ERISA participants and their representatives have no way to respond to this input, since it is not being made available. The public is not being told why this post notice and comment information is more valuable than what was collected during the notice and comment period itself. It is clear that there were meetings with industry representatives and that the industry and certain members of Congress sent letters, but the content of these meetings and letters are not entirely disclosed. The industry apparently referenced a "confidential" study that predicts an increase in premiums. It is likewise curious that the very short 15-day notice and comment period does not even provide time for an individual to make a FOIA request to uncover what is influencing this process.

To make matters worse, the industry study that the Department is now proposing seems to allow for this process to become even less transparent. The industry will collect data in a way that will be hidden from the public, and based on this, the Department proposes to make a new decision on how to protect participants' rights reasonable procedures in the adjudication of disability benefits. Such an endeavor is completely unfair to plan participants. There is no way that participants can effectively comment or provide their own "study," since they are not in possession of the data and could not muster the resources to process it, even if they were.

I do not assume that the industry is correct in estimating that premiums for group disability benefits would increase by 5-8%. But to the extent that premiums would be increased to provide real coverage, ERISA participants would likely welcome this and it would present no additional burden to public programs. If the difference in premiums is the difference between paying something for nothing and paying something for something, the argument surrounding the increase rings hollow. To the extent the Department thinks a delay is needed to prevent such an increase, this needs to be reconsidered, as the costs will not outweigh the benefits even in the worst case scenario.

I ask that the effective date of the regulations not be delayed, since the reason for doing so lacks the necessary transparency and undermines the sense of trust and fairness that should inhere in this rule-making process.

Thank you considering my comments,

A handwritten signature in blue ink, appearing to read "M Bartolic". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michelle Roberts Bartolic, Esq.  
Roberts Bartolic LLP, Partner