

LAW OFFICES OF
JULIAN M. BAUM & ASSOCIATES
9 Tenaya Lane, Novato, California 94947
Telephone: (415) 963-4424 Fax: (888) 452-3849
Writer's Electronic Mail: JMB@JMBLawGroup.com

December 11, 2017

Submitted vial e-mail: e-ORI@Dol.gov

Hon. Timothy D. Hauser
Deputy Assistant Secretary
Employee Benefits Administration
Department of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Re: Re-Examination of Claims Procedure Regulations (RIN No. 1210-AB39)

Dear Deputy Assistant Hauser:

I write to urge the Department **not** to further delay or revise the final disability claims regulations, which are now scheduled to take full effect on April 1, 2018.

I am an attorney of over thirty years' experience. My practice for more than twenty years has been primarily in the field of ERISA benefits litigation, representing employee-beneficiaries. Before that, I was an attorney with large national firms representing corporate clients in complex litigation.

The final rules, as written, bring needed clarity and consistency to ERISA claims procedures. The Department carefully concluded that the final rules will not unduly increase the costs of claims administration. The Department was correct, and nothing has changed in that regard. To the contrary, I believe that in practice they will actually decrease the costs to claims stakeholders and to the federal judiciary. Insurance industry arguments against the final regulations are neither new to the Department nor do they withstand informed scrutiny.

While I believe that the particulars of the final rules are interdependent, important, and salutary to ERISA's statutory and public policy purposes, I wish to emphasize one particularly important element: the provision explicitly requiring an ERISA insurer to allow a claimant and his physicians the right to respond to new evidence or a new rationale that the insurer relies upon to deny a benefits claim. This would appear to be a common-sense requirement of fairness. Yet it most often *does not happen in practice*. The final rules explicitly require that beneficiaries be given that opportunity to respond before their claims are finally denied or terminated. There is no principled reason – other than a blindly partisan desire to favor insurers over beneficiaries -- to revise or rescind that rule.

The rule will actually decrease claim costs. I base this view on long experience. Allowing benefits claimants to respond to new evidence, and requiring ERISA insurers by federal regulation to review and consider those responses, will reduce federal litigation regarding those

benefits, and will streamline those suits that are ultimately filed, saving large costs and expenses to the parties and decreasing the burdens of those cases on the federal judiciary.

In closing, I wish to echo the trenchant observations of another commenter, attorney Stephen R. Bruce of Washington, D.C.:

I urge the Department not to change the final disability regulations on the basis of never-produced evidence and the raw assertion of backroom deals. The Department of Labor has a responsibility under ERISA Section 503 to ensure a “full and fair review” of a denied benefit claim. In 2015-2016, the Department took long-due steps to carry out that responsibility, by noticing, considering, and finalizing the claims regulations. The Department should not be deterred from making those reforms effective beyond the 90 additional days it has already given. As the Supreme Court has held, ERISA was enacted to ensure “higher-than-marketplace standards.” *MetLife v. Glenn*, 554 U.S. 105, 115 (2008). The insurance industry’s displeasure with the Department of Labor performing its statutory duty is no basis for overturning duly-authorized and already-final regulations. Moreover, the idea that the insurance industry can comment, and then have a second or a third opportunity to block final rules, still without producing any evidence on costs, betrays not only the values of ERISA but also those of the APA.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jul Baum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Julian M. Baum