

December 11, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Re: Claims Procedure for Plans Providing Disability Benefits Examination.
Docket ID: EBSA-2015-0017, RIN 1210-AB39

Disability Rights Education and Defense Fund (DREDF) is pleased to submit comments in response to the Department of Labor (DOL) proposal to delay the applicability of RIN 1210-AB39. The final regulation amends the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. DREDF is a national cross-disability law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. We are committed to increasing accessible and equally effective healthcare for people with disabilities and eliminating persistent health disparities that affect the length and quality of their lives.

DREDF is opposed to the modification or rescission of the regulation. Workers who seek disability benefits may find it difficult to understand the process and why a claim is approved or denied. Americans with disabilities make up one of the United States' largest minorities. More than 25% live in poverty and do not have savings or resources that can be used to "tide them over" when they experience an injury or exacerbation of an existing disability that reduces their income. These workers, who develop a disability while working or whose conditions change so that they cannot sustain a current income level, may be unable to pay for groceries, housing, medication, or needed services and supports to remain in the community unless they receive a fair and accountable evaluation of benefit accrual. Workers with disabilities must be provided a transparent process with adequate safeguards and procedural protections.

The final regulations provide important due process rights when a plan or insurer denies a disability claim that DREDF deems essential, including:

- Permitting claimants to respond to new information that the plan or insurer cites to deny a disability claim;
- Requiring the insurer to discuss contrary evidence such as a favorable Social Security decision; requiring the independence and impartiality of the persons involved in making the decision to deny the benefit; and
- Ensuring the claimant's right to the entire claim file and the plan or insurer's internal protocols.

These protections merely mirror protections that already apply when workers file claims for group health benefits. In the proposal to delay implementation of the final rule, the

Department highlights stakeholder claims that “there are already existing robust consumer protections” that apply to disability claimants.¹ Since the Consumer Protection Rule that was finalized on December 16, 2016 merely codifies basic due process rights and procedures, any insurer that did in fact have “robust consumer protections” in place should require few changes in procedure or policy. Plans may have to update their notice materials to ensure that disability claimants understand their rights, strengthen conflict of interest provisions, and put into place stronger procedures to ensure timely responses to disability claims, but again, these are absolutely basic due process requirements and plans will have had a full year to make these changes by the original January 1, 2018 implementation date for the final Rule. Moreover, stakeholder claims that the final Rule’s requirements will “clog the courts for resolution of benefit claims”² is wholly unsupported; the courts should not be clogged unless the plans already know or anticipate that they cannot provide adequate due process to disability claimants. DREDF would be very interested in evidence on that latter point.

DREDF notes that the initial proposed rulemaking to incorporate safeguards and protections into the disability claims process received 145 comments from a wide variety of stakeholders, including: plan participants, plan sponsors, and employers and trade groups, and consumers groups representing disability benefit claimants. DREDF strongly recommends allowing the entirety of the final rule to take effect as written, without any further delay. Stakeholders who have more recent objections to the rule had the same comment period and opportunity afforded to those who submitted comments earlier, and are now being given 90 days to provide any further relevant evidence in support of their requested changes.

Thank you for the opportunity to provide comments. Please contact me at (510) 644-2555, syee@dredf.org, with any questions. DREDF looks forward to continuing to work with DOL to ensure workers with disabilities receive the benefits and supports they need to remain vital participants in their communities.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Silvia Yee", written over a horizontal line.

Silvia Yee
Senior Staff Attorney

¹ <https://www.federalregister.gov/d/2017-22082/p-24>.

² <https://www.federalregister.gov/d/2017-22082/p-24>.