

January 19, 2016

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

Attn: Claims Procedure Regulation Amendment for Plans Providing Disability Benefits  
Re: RIN 1210-AB39

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees and their families. The Center applauds the Department of Labor for proposing additional procedural protections for participants making claims for disability benefits from employee benefit plans.

Disability claims can be highly technical and contentious. The Affordable Care Act increased the procedural protections of the internal claims and appeals procedures for participants in group health plans. The proposed amendment will apply those added protections, with some modifications, to disability claims.

#### New procedural protections

The proposed amendment provides added transparency to the claims and appeals process that will help claimants to understand a benefit denial and to determine whether an appeal is appropriate. For initial claims that are denied in whole or in part, the proposal requires a discussion of the decision to deny, including reasons for disagreeing with a Social Security determination or disability decision by a third party. Importantly, an initial claim denial must include any internal rules or criteria that were used to deny the claim and a notice that the claimant can request, free of charge, all relevant documents.

Claimants appealing an initial claim denial must be given any new or additional evidence considered by the plan during the appeal process. Additionally, claimants must be given a reasonable opportunity to respond to the new evidence.

The proposed amendment includes new criteria for avoiding conflicts of interest by persons who decide disability claims. Employment decisions, such as hiring, promotions, and bonuses, cannot be based on the frequency of disability claim denials.

A claimant will be deemed to have exhausted the plan's administrative remedies if a plan fails to establish or strictly follow the claims procedures rules. A de minimis exception applies. If a

claimant chooses to proceed to court under deemed exhaustion, the claim must be reviewed de novo, without deference to the plan's decision, regardless of the plan's stated standard of review.

The definition of a claim denial will be expanded to include a rescission of coverage, a retroactive cancellation or discontinuance of coverage, even if the participant is not receiving benefits.

Notices must be provided in a culturally and linguistically appropriate manner.

The Pension Rights Center supports this proposed amendment to the disability claim regulations to provide additional participant protections to the internal claims and appeals procedures for disability claimants.

#### Statute of limitations

The Labor Department asks whether plans should be required to give participants a clear and prominent statement of any applicable contractual limitations on the period of time for filing a suit in court following a final benefit denial. We believe such a notice is essential to permit claimants to make a reasonable, fully informed decision as to whether to proceed further with a denied claim. Moreover, a "clear and prominent" requirement will ensure that participants do not proceed lacking this significant information about their rights.

#### Additional comments

The Pension Rights Center encourages the Labor Department to also revise the internal claims and appeals procedures applicable to pension plans. In 2000 the Labor Department revised the Claims Procedure Rules to provide additional and substantial procedural protections for participants in group health and disability plans. The Affordable Care Act of 2010 created new protections for participants in group health plans. This amendment to the claims rules will add those procedural protections to disability plans. However, the claims rules applicable to pension plans are still the original rules written in 1977.

Pension plan claimants would greatly benefit from many of the additional procedural protections that have been added for claimants in group health and disability plans. Of course, some participant protections written for health and disability claims would not be pertinent to pension plans, but there are a number of areas where enhanced procedural protections will benefit pension plan participants and improve the transparency of the pension claims process.

In particular, pension claimants would benefit from the full range of disclosures available under health and disability claims. Specifically, access to their complete claims file would help pension claimants who question the calculation of their benefit amounts. Claimants who disagree with their benefit calculation can then decide whether to make an appeal. The appeals process applicable to health and disability claims should be applied to pension claims, including rules pertaining to standards of review, timing of appeals, number of permitted appeals, rules for

arbitration of claims, and the right to proceed to court under “deemed exhaustion” of administrative remedies.

Additionally, pension claims rules should address the issue of recoupments, the recovery of overpayments made to participants. We encourage the Labor Department to clarify that a recoupment action is a partial denial of benefits that can be appealed under a plan’s internal claims and appeals procedures for benefit claims. Thus, a recoupment action should trigger all of the notice, disclosure and appeal rights afforded to claimants under Section 503 of ERISA.

We appreciate this opportunity to comment on the vitally important additions to the procedural protections for participants making disability claims.

Sincerely,

A handwritten signature in cursive script that reads "Jane T. Smith".

Jane T. Smith  
Policy Analyst