

# PUBLIC SUBMISSION

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## General Comment

I would like to weigh in favoring the proposed rule changes. For more than 15 years I have represented claimants in ERISA-governed disability claims, not only through the claims and appeal processes, but also in litigation. The Department has identified the most important and recurring issues that seem to undermine the due process the regulations are designed to guarantee.

In particular, I favor the move to formally do away with the "substantial compliance" doctrine by which many courts have excused departures from the regulatory requirements. Excusing the insurer's departures invites neglect at minimum, and abuse at the worst. Unrepresented lay people have a hard enough time perfecting their claims in ERISA's administrative labyrinth even when the plan administrator does comply completely with all its deadlines, notices and other obligations. Excusing departures by the administrator seems to invite a lower level of care by administrators and can meaningfully undermine the claimant's rights.

If I had my own wish list of regulatory issues, at the top of my list would be a prohibition against

"remands" by federal judges even after a finding that an adverse claim decision was an abuse of discretion. Increasingly we see situations where a claim is denied, the claimant retains counsel, files suit and litigates for years (without any income in the meantime), actually prevails in proving that the denial of the claim was an abuse of discretion, and his reward is to have the claim "remanded" to the same wrongdoer for further administrative proceedings. Sometimes this leads to another denial with the insurer using the opportunity to try to cover the decision with better evidence, and a second trip back into court to start all over. This creates a never ending process where the claimant is starved into submission, and where the wrongdoer is never held accountable. I would love to see a rule requiring the federal judiciary to rule on the merits of the claim and either award or deny benefits, and doing away with remands altogether. If an insurer has denied a claim arbitrarily, it should be ordered to pay, and the worker should receive his or her benefits. Federal judges are punting on their responsibility to make a decision on the merits when the administrator behaves badly.