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General Comment

Re: Department of Labor, RIN-1210-AB39

Thank you for formulating these proposed regulations. As a former ERISA attorney (now disabled), I know how ERISA's claims procedure affects both employees and employers. In sum, the process for claiming disability benefits is strongly skewed in favor of plan administrators and against the claimant. Plans take advantage of disabled claimants' poor state of health and delay or deny claims unfairly, hoping the claimant will give up. I have seen this in my own case as well as others.

The Department of Labor took a big step in the right direction when it took into account the similarity between disability and health insurance claims by revising the claim procedure regulations in 2000. However, more needs to be done.

Given the current judicial environment and the abuse of discretion standard, regulations ensuring that the claims procedure is as fair and impartial as possible are necessary. These requirements must be spelled out or plans will decide what "fair and impartial" means. The proposal to prohibit compensating claims adjudicators for claim denials and contracting with medical experts based on their reputation of denying claims are absolutely necessary. I would urge the Department to go further in spelling out what is deemed fair and impartial. For example, while

the current regulations call for a supposed independent review on appeal, often the person considering the appeal is the original reviewer's supervisor and not particularly independent.

The ERISA claims procedure disclosure requirements also need strengthening. The Department's proposals in this area are very welcome. Disability claims rely on facts and interpretation, and the plan's interpretations are critical for claimants to have for a full and fair internal review of adverse benefit decisions. In particular, requiring the plan to explain how it reconciles its decision with decisions for other disability sources such as Social Security is excellent. Insisting plans cite and explain how a treating physician's reports were handled is also important. It would be fruitful to add to the regulations a requirement that the treating physician's opinion be allocated more weight than those of the plan's consultants.

I would also suggest you include a fine for each day the plan goes over the disclosure deadline for requested documents in this section and all other pertinent ones. This would encourage plan compliance and relieve claimants of the need to sue for non-disclosure or late disclosure.

Likewise, the right to review new evidence generated by the plan after a claims denial and before an appeal is necessary. The claims procedure is meaningless without access to all information generated by a plan relating to a claim. Internal rules and procedures also need to be made available. As to tolling, see my above remarks. Anything to make life easier for a disabled, often sick, claimant should be incorporated in to the new regulations.

Allowing claimants to file a lawsuit and have it considered under the de novo standard of review if the plan has not followed the correct procedures is an important addition to the claims procedure regulations. I suggest that the language regarding exceptions to this rule, i.e., de minimis violations that are for "... good cause or due to matters beyond the control of the plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the plan and the claimant" be expanded on and strengthened to discourage plans from abusing them.

The other proposed changes should be kept.

I am very happy to see the Department address this issue. It is very difficult for disabled plan participants to go through the claims process, and even more difficult to file a lawsuit if their internal appeal is denied as well. As you no doubt know, court decisions to date do little to encourage plans to approve disability claims. It is all about the bottom line and has nothing to do with the rights of employees who have forfeited pay in lieu of participation in a disability plan. I do not know of anyone who wanted to stop working and claim disability benefits. To deny claims precisely when they are needed is unjust to the extreme. Anything that can be done to discourage unfair and unlawful denials on the part of plans should be done.