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October 24, 2017

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: Claims Procedure Regulations for Plans Providing Disability Benefits
Examination
RIN No: 1210-AB39
Regulation: 29 C.F.R. §2560.503-1

Dear Deputy Assistant Secretary Hauser:

My name is Joseph Patrick McDonald and I am the President and Senior Partner of McDonald & McDonald Co., L.P.A., a law firm in Dayton, Ohio, which represents employees in long-term disability benefit litigation. I am admitted to the practice of law in the State of Ohio, State of New York and many Federal District Courts throughout the Midwest as well as the Second, Third and Sixth Circuit Courts of Appeal. I am admitted to practice before the United States Supreme Court as well. My practice is exclusively focused on representing individuals who have been denied long-term disability benefits.

I submitted comments to the Department of Labor on January 18, 2016, on the proposed changes to the regulations located at 29 C.F.R. §2560.503-1. I believe that there was a sufficient opportunity for the industry to comment on the cost features of the proposed regulations which offered enhancements to the existing regulatory structure which has been in place for over 20 years.

I have no doubt that insurers and self-funded plans keep abreast of proposed changes and I believe that the comments received from the public demonstrated that the proposed rule was long over due.

I have become aware of a proposal to extend, (for 90 days), the effective date of the updated rule at 29 C.F.R. §2560.503-1. The final regulations were scheduled to become effective on January 18, 2018. I note that the Department of Labor's publication indicates that the proposed 90-day delay is secondary to concerns communicated in Executive Order 13777.

The purpose of ERISA and its goals deserve some discussion. The primary purpose of ERISA is the orderly administration of employee benefits. "Orderly" has never meant quick. "Orderly" has never been associated with a secretive process. ERISA, as the Supreme Court has noted, promotes predictability, efficiency and uniformity in the administration of employee benefit claims.

The regulatory features of 29 C.F.R. §2560.503-1 are designed to promote minimum standards to ensure the full and fair review of a denied disability claim.

Therefore, the final regulations serve the purpose of clarifying the rights of working Americans. Millions of Americans have access to long-term disability pursuant to plans that are sponsored by their employer. The employees who are insured under these plans frequently need these benefits as they begin temporary, extended or permanent departures from the work force because of sickness or illness. Long-term disability benefits provide much needed security to American families. Because of the dramatic effect that these benefits can have on the safety and security of American families, any effort to restrict them or reduce them or otherwise stall them can be detrimental to the safety and security of the American people.

I note that Executive Order 13777 states that it is, "the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people." Likewise, Section 3D of the Executive Order, defines which regulations which are problematic. The list includes regulations that eliminate jobs or inhibit job creation, are outdated, unnecessary or ineffective or impose costs that exceed benefits or create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

While Executive Order 13777 has lofty goals, which should be sought, it is improper to say that the Department of Labor's final rule at 29 C.F.R. §2560.503-1 is contrary to the Executive Order. The rule effective on January 18, 2018, enhances the safety and security of American workers and American families; it does not threaten jobs or job creation. By making access to employee benefits more transparent, we ensure that workers gain full access to them.

The proposal to extend the effective date of the proposed rule is based upon a "confidential survey of carriers carrying approximately 18 million participants in group long term disability plans (which reflects approximately 45% of the group long-term disability insurance market)." Apparently, these same carriers indicate that the rule would promote increases of 5%-8% in 2018 when the final rule is to take effect.

The proposed extension should be denied for three very clear reasons. First, the confidential survey of carriers has not been made available to the public and therefore is unreliable speculation.

Second, an increase of 5%-8% in premiums seems excessive to your undersigned because the regulatory environment presently applicable to long-term disability claims is not being overhauled in full. The proposals made part of the final rule are modest at best and do not change the underlying features of how benefit claims are administered in the United States. What changes cause this confidential survey to conclude that premiums would go up by 5% in the year 2018?

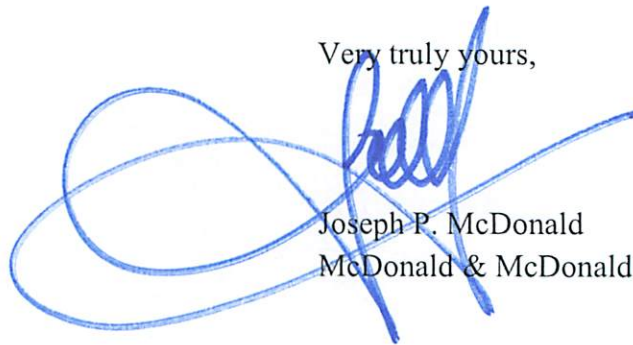
The third reason why the 90-day extension is improper is because the industry had more than enough time to demonstrate economic impacts (if they existed) before the public comment period closed. Indeed, no insurer or group of insurers petitioned the Department of Labor to extend the public comment period for any reason.

Presently, this attempt to extend the deadline of the rules effective date seems like a nefarious attempt to use fear rather than facts. A post-public comment "confidential survey" of insurers *is the most unreliable vehicle to suspend this Department's rule making authority*. If we allow this "confidential survey method" to work in this circumstance, we reduce administrative process to a secretive *post hoc* effort.

In sum, I ask that the effective date of the regulations continue to be January 18, 2018.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'JPM', is written over the typed name and company name. The signature is stylized and somewhat illegible.

Joseph P. McDonald
McDonald & McDonald Co., L.P.A.

JPM/ksw