

**STEPHEN R. BRUCE LAW OFFICES**

1667 K ST., NW, SUITE 410

WASHINGTON, D.C. 20006

202-289-1117

FAX: 202-289-1583

[stephen.bruce@prodigy.net](mailto:stephen.bruce@prodigy.net)

October 25, 2017

**Submitted via:** [e-ORI@dol.gov](mailto:e-ORI@dol.gov)

Timothy D. Hauser  
Deputy Assistant Secretary  
Employee Benefits Administration  
Department of Labor  
200 Constitution Avenue NW  
Washington D.C. 20210

**Re: Proposed Rule to Extend Applicability Date for Final Regulations on Claims Procedures for Plans Providing Disability Benefits (RIN 1210-AB39)**

Dear Deputy Assistant Secretary Hauser:

I am an attorney who represents claimants in ERISA cases. I submitted detailed comments on the proposed disability claims regulations on January 19, 2016.

I am respectfully requesting that the Secretary of Labor *not* delay the effective date of the final disability claims regulations at 29 C.F.R. 2560.503-1, which the Secretary made final on December 19, 2016 and which are scheduled to become applicable on January 1, 2018. These regulations were adopted after extraordinarily extensive notice and comment: Over 145 public comments were submitted and considered by DOL over a nearly one-year period. Even when the regulations were made final at the end of 2016, all interested parties were given another *full* year before the changes take effect on January 1, 2018. This provided ample opportunity for everyone affected to implement procedures to comply with the new regulations.

As you know, many of the changes in the final regulations parallel changes already made by health insurers under the ACA in 2010, which the insurance industry is not only conversant with but already equipped to implement. As the DOL outlines in the preamble to this proposed regulation, these changes were carefully-considered improvements to the regulations in effect since 2000 on such matters as disclosure requirements, rules related to claim files and internal protocols, conflict of interest rules, and linguistic standards for communicating with non-English speaking claimants. All of these changes were to address practices that had been met with rebukes, including from the judiciary and DOL's ERISA Advisory Council, during the 15 years since the DOL last issued disability claims

regulations. Importantly, none of these requirements, or the carefully-weighed changes to them, involve substantial costs.

As described in the December 19, 2016 preamble to the final regulations, the purpose of these rules is to improve the claims process so disabled participants and their beneficiaries can obtain speedy and just determinations of their eligibility and not have to wait for essential income to replace earnings their disabilities have caused them to lose. As DOL's EBSA knows too well, the claims processes for disability claims occur on uneven playing fields because disabled claimants are not repeat players (and many are not even represented by experienced attorneys), while the insurance companies and their supporting attorneys, experts, and trade associations are not only experienced but have billions of dollars in resources to back them. The need for these regulations, and the level of discontent with the status quo, is shown by judicial filing statistics showing that over *65 percent* of current ERISA filings are individual and class action complaints about *disability benefit denials*.

Everyone has heard by now that the proposed delay in these final regulations is at the direction of the White House, and not on the merits. Published reports show that this is one of the rules the White House and OIRA have targeted as part of its deregulation efforts. The insurance companies and related associations and law firms who asked the White House and the new Secretary to delay the final regulations all had the same opportunity as I and close to one-hundred and fifty others had to publicly comment on the proposed regulations between November 2015 and January 2016--and almost all of these insurers and related parties did so. These insurers and related parties already had the opportunity to supply data related to costs and other burdens from the proposed regulations. There are no indications that the costs data that the industry is producing to justify this delay could not have been produced in January 2016 or that it is any more informative or reliable than what was submitted previously. The delay in the regulations and reopening of the regulations will serve only one purpose: giving the insurance companies and related parties another opportunity to lobby DOL through the White House and members of Congress to remove or weaken the improvements in the regulations.

Indeed, the focus of the reopened, second comment period only on costs and on weakening the regulations would appear to violate the requirements of the Administrative Procedure Act (APA) of 1946 (5 U.S.C. §551 et seq.) by not considering benefits or strengthening the regulations. To grant the insurance companies an extension close to two years after public comments closed also has the appearance of favoritism to only certain members of the public, without weighing the harm visited upon disabled participants and their beneficiaries.

The limited information that the Secretary's office has made available about the insurance industry's new comments also shows a lack of transparency about the real reasons for this delay, with no records being kept of meetings with the Secretary, OIRA, and the White House. Of particular concern is that the proposed regulations appear to predicate the delay and reopening of the record for a second round of comments on a "confidential" study based on a "survey" of unidentified officers of insurance "carriers" predicting a "5-8%" increase in premiums from application of the final regulations. Not only is the prediction of a such an increase in premiums from these carefully-calibrated changes to the existing regulations preposterous, but no efforts have been made to use modern survey techniques or to measure the benefits from the regulations in terms of fewer unjust or delayed denials of income to individuals and families who suffer from poor health and dire financial circumstances. I understand that FOIA requests have been made for the industry group's "confidential" survey and other non-public comments but that no documents have been produced to date. All this suggests violations of the APA and FOIA that will be added to the individual and class action litigation that denied disability claimants have already been bringing in the federal courts.

In sum, the only product of the proposed delay will be to compromise carefully-considered final regulations, which were already largely in place for health plans under the ACA, and to harm disabled participants and their families.

I appreciate the opportunity to present comments about the proposal to delay application of the final disability claims rules. If you have any questions or want me to do anything more, please contact me at 202-289-1117. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. Bruce". The signature is written in a cursive, flowing style.

Stephen R. Bruce