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Submitted Electronically via e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210
Attention: Claims Procedure for Plans Providing Disability Benefits Examination

Subject: Claims Procedure for Plans Providing Disability Benefits; Extension of Applicability Date (RIN 1210-AB39)

Dear Sir/Madam:

On behalf of the American Council of Life Insurers[1] (ACLI), I appreciate the opportunity to provide comments in response to the proposal by the Department of Labor ("Department") to extend the January 1, 2018 applicability date of the final rule amending Section 2560.503-1 of the Employee Retirement Income Security Act ("ERISA"), the claims procedure regulations applicable to ERISA-covered employee benefit plans that provide disability income benefits (the "Final Rule") published on December 19, 2016.

ACLI strongly supports a delay of the applicability date. However, we are concerned that a 90-day delay will provide insufficient time for the Department to carefully review submitted data and comments, complete its examination, determine next steps, and communicate its conclusions to stakeholders in time for stakeholders to implement modifications to the Final Rule, if any. ACLI and its members have committed to work with the Department to gather data responsive to the data requests in the NPRM, and we have already begun this process. Given the volume and complexity of the data requested, the fact that our members utilize different systems, and the time required to review, analyze, and format the data in a responsive manner, we do not expect that we will be responding to the data request prior to the Department's December 11, 2017 deadline. Accordingly, we question whether a 90-day delay, through April 1, 2018, will provide sufficient time for the Department to review the data it has received, complete a new, updated Regulatory Impact Analysis ("RIA"), determine next steps, and obtain other required executive branch regulatory approval. Since disability claims administration is heavily dependent on technology, the industry estimates that it will need at least 180 days after final action by the Department to implement modifications.

[1] The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States.

A Delay Will Provide Adequate Time for the Department to Evaluate the Impact of the Amendments

The ACLI agrees that the full and fair equitable administration of disability income claims is an important objective. However, as detailed in our January 19, 2016 comment letter, we have significant concerns with many provisions of the Final Rule. These provisions will increase the administrative burden on insurers and other claims administrators without any tangible benefit to claimants as to the fair and equitable adjudication of claims. Contrary to the expressed justification for the Final Rule, some of the final changes will unnecessarily complicate claims adjudication practices that have been working well for administrators and that have provided fair and equitable claims adjudication for claimants for over a decade.

In promulgating the Final Rule, the Department failed both to qualitatively describe the benefits of the proposed regulations, and to adequately quantify the proposed regulations' costs, a long-standing prerequisite of Federal agency rulemaking. Moreover, the Department also failed to adequately address the negative impact to consumers of the Final Rule. By way of illustration, the Final Rule's "new rationale" provisions will in most circumstances shorten the amount of time consumers will have to appeal a new rationale for denying their claim, which consequently may deprive them of the right to obtain a full and fair review. Additionally, the Final Rule's exhaustion of administrative remedies requirements will prolong the litigation between parties and will also likely increase the total number of benefit suits that are filed – in contravention to the Final Rule's stated goals. It is clear that the Department did not fully evaluate the negative impact of the Final Rule on consumers, and it is necessary and appropriate for the Department to therefore delay the applicability date to provide time for it to do so, as well as time for the Department to review and consider the critical information the Department is now seeking.

A Delay Will Provide Adequate Time for the Department to Evaluate the Significant Differences in Disability Income Insurance Adjudication versus Medical Expense Insurance Adjudication

As further detailed in our January 19th comment letter, the Department, in promulgating the Final Rule, stated that it intended to amend ERISA disability claims regulations to mirror health insurance claims procedures under the Affordable Care Act. However, in doing so, the Department failed to recognize the material differences inherent in how disability income claims are adjudicated versus adjudication of medical claims. The fundamental differences between medical and disability claims adjudication are material to the impact of the Final Rule. Medical claims are generally auto-adjudicated. The administrator's benefit decision is based on simple procedural questions (e.g., whether the benefit is a covered benefit, whether the procedure required a prior authorization, whether the health care provider was in or outside the network, etc.).

Disability income claims adjudication, on the other hand, requires review of data from multiple sources of information and the skilled input of many types of professionals, including medical, vocational, and rehabilitation specialists. Disability claims involve a higher degree of analysis and require more extensive, time-consuming, and ongoing reviews (as a claim can last years or decades). Disability claims administrators are required to take into consideration the determination of the nature of the underlying medical condition, the extent of the individual's resulting functional deficits, and the impact on the individual's ability to work, among other items. Moreover, the adjudicating of a disability claim is not a binary decision. The medical, occupational, and other information that comes into a claim file is constantly evolving and must be examined holistically and repeatedly by the claim examiner as the medical condition of a claimant evolves over time. In addition, many disability plans contain definitions of disability that change over the pendency of a claim, typically from "own occupation" to "any occupation" as defined in the plan to continue to receive disability

benefits, adding further to the complexity of the claim administration. These are just some of the ways that disability claims adjudication differs from medical claims adjudication, which is a far simpler process. The current disability claims regulations take these differences into account. The Final Rule does not do so in every instance. Regulations that may well serve medical claimants will not work for disability income claimants.

It is precisely these distinctions that led to the claims procedure regulations being promulgated with separate requirements for health care and disability income plans seventeen years ago, a distinction that serves the interests of all stakeholders and thus should continue, with appropriate amendments. A delay will provide time for all parties to gain a clearer understanding of the differences in claims adjudication.

A Delay Will Provide Adequate Time for the Department to Revise the Regulatory Impact Analysis

In the Final Rule, the Department stated that it had quantified the costs where possible and provided a qualitative discussion of the benefits that are associated with the proposed regulations. However, the Final Rule is replete with references to the Department's lack of data, much of it critical, to this rulemaking. Further, the Department stated that comment letters did not provide data on the cost analysis. Indeed, in the proposed rule to extend the applicability date, the Department stated that it had requested data in April 2015 ("2015 NPRM")[2]; however, we note that it was not until May 2015 that the Department even added to its regulatory agenda that it would propose amendments to claims procedures regulations. Further, it was not until November 18, 2015 that the Department issued the proposed rule, and this proposal did not include a request for data nor did it refer to the "2015 NPRM" in its cost/benefit analysis of that proposed rule. Instead the Department basically utilized analysis completed specifically for the health claims procedures update several years earlier. The Department's lack of data is reflected in its flawed RIA. As stated in our January 19th comment letter, we believe that the Department (1) failed to qualitatively describe the benefits of the proposed regulations, and (2) failed to adequately quantify the primary costs associated with the proposed regulations. A delay at this point will provide time for the Department to review the data it requested on October 12, 2017, and conduct a meaningful and appropriate RIA.

Summary

All claimants are entitled to a full and fair review. The pre-January 1, 2017 rules provide for such full and fair review. The Final Rule will add to the costs and administrative burden for a claims administrator to reasonably and timely decide benefit claims and the Final Rule will increase - not decrease – the number of litigated disability cases, in contravention of the Department's goals stated in the preamble. Moreover, it will prolong the time it takes for the courts to resolve disputes.

ACLI strongly supports the proposal to delay the applicability date of the disability claims procedures rule for further review. In addition, ACLI will respond with data and comments pertinent for a meaningful and an appropriate examination of the merit of review of potential regulatory alternatives by the December 11, 2017 deadline.

Sincerely,

Steven Clayburn, FSA, MAAA

[2] See 82 Fed. Reg. 47409, 47411 (October 12, 2017)