From: Michael Quirk [mailto:mquirk@pillsburycoleman.com]
Sent: Friday, October 27, 2017 4:50 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB39

By E-Mail: 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: Proposal to Delay Implementation of 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 Michael Quirk and I am an attorney at Pillsbury & Coleman, LLP, an insurance policyholder law firm. Over the past two decades, our firm has represented thousands of policyholders in insurance benefit litigation. A large number of those cases involve disability benefit claims under ERISA-governed disability plans.

I write in response to the Employee Benefits Security Administration's ("EBSA") proposal to delay implementation of the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits, 29 C.F.R. § 2560.503-1.

EBSA's proposal to delay finalized regulations raises serious transparency issues. EBSA finalized rules only after an extensive notice and comment period that yielded an overwhelming amount of comments from various stakeholders including the insurance industry. At that time, many of industry comments suggested that there were cost issues associated with implementing the rules. However, those comments were speculative and not supported by relevant data. Nonetheless, when the industry commenters asked for more time to adjust to the new rules, EBSA agreed to significantly delay the effective date.

The Administrative Procedure Act's ("APA") notice and comment requirements "serve the salutary purposes of (1) 'ensur[ing] that agency regulations are tested via exposure to diverse public comment, (2) ensur[ing] fairness to affected parties, and (3) [giving] affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.'" *AFL–CIO v. Chao*, 496 F.Supp.2d 76, 91 (D.D.C. 2007) (citing *Int'l Union, United Mine Workers of Am. v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)).

EBSA's current proposal obstructs the APA's goal of fairness to all parties. We are now told by EBSA at the eleventh-hour that other industry input is being relied upon— information that could have been contributed during the proper notice and comment period, but was not.

One cannot assume the insurance industry is correct in its estimate that premiums for group disability benefits would increase by 5-8%. Nonetheless, to the extent that premiums would be increased to avoid the industry's current standard of illusory coverage, ERISA participants would gladly accept higher premiums in return for greater regulatory protection. To the extent the Department thinks a delay is needed to prevent such an increase, this needs to be reconsidered, as the costs will not outweigh the overall benefit to insureds.

Do not delay the effective date of the regulations. It would undermine the sense of trust and fairness that should inhere in this rule-making process. *See Chao*, 496 F.Supp.2d at 91.

Very Truly Yours,

Michael James Quirk, Esq.

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