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By Email (e-ORI@DOL.gov) and Web Submission

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room M-5655
United States Department of Labor
200 Constitution Avenue NW
Washington D.C. 20210

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

Dear Deputy Assistant Secretary Hauser:

I write to comment on the Department of Labor's unfortunate decision to delay and reexamine the final disability claims regulations (Final Regulation on Claims Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 (Dec. 19, 2016)) that are currently scheduled to go into effect on April 1, 2018.

I represent and advocate on behalf of the disabled and have helped hundreds of people whose claims for disability benefits under employer-sponsored plans were denied. This work includes helping people during the administrative claims process and, when necessary, in litigation.

Employer provided disability insurance is a highly profitable insurance product. Most people in this country who have any form of private disability insurance have that through an employee benefit package, and it is often the only thing standing between those who have suffered a disabling injury or illness and complete financial devastation. Because of this, it is vitally important that disability claims be handled in a timely and fair manner by the insurance companies providing this coverage.

Unfortunately, in my experiencing handling hundreds of disability benefit cases, the insurance companies and third party administrators who provide disability insurance in the workplace often fail to adequately consider the evidence before them, fail to inform insureds of what is necessary to perfect their claims, and fail to conduct reasonable investigations into claims. One of the reasons this happens so frequently is that disability insurers do not fear any adverse financial outcomes from wrongfully denying claims due to the lack of punitive damages remedies under ERISA. In my experience, disability insurers do much more thorough and fair work evaluating claims under individual non-ERISA disability policies. It is no secret that this is because of the threat of punitive damages for wrongfully denied claims: major players in the industry, such as the Unum Life Insurance Company, have been caught red-handed in leaked internal memoranda encouraging more aggressive claim denials in ERISA cases for this exact reason.

In addition to the aggressive and sloppy claims handling practices that are endemic in ERISA cases, disability claimants often have trouble finding representation to assist them in the administrative claims process and are often unaware that the process itself is their *final* chance to prove the merits of their claims. Because of this, the Department must take seriously its obligation to ensure that employees are treated fairly and have adequate opportunity to present their claims. That was exactly what happened when the final rule at issue here was adopted during the previous administration. I strongly encourage the Department not to rethink that rulemaking process, which was lengthy and exhaustive and which took account of all the objections to the final rule currently being raised by the industry.

The core argument being advanced against the final rule going into effect is the claim that it will increase the costs of providing coverage and therefore reduce overall coverage. This is not grounded in fact or data.

As an initial matter, the cost argument was already considered and rejected by the Department in adopting the final rule – the current arguments are simply raising the same points again in the hopes that different personnel will reach different decisions. This is a wasteful undertaking for a set of changes to the existing regulations that is, at best, a modest change in the existing rules. The final rule does not impose any particularly onerous requirements; instead, it requires basic fairness, like the rule requiring insurers to explain why it is rejecting evidence when denying a claim, or the rule allowing plan participants to initiate legal action when they are not afforded the appeal process required by the regulations.

Moreover, data collected by the Department's Bureau of Labor Statistics shows that there is simply no merit to the contention that a modest change in the claims regulations will have any impact on participation in employer-provided disability benefit plans. Between 1999 and 2014, BLS data shows that participation in employer-provided disability benefit plans has increased, not decreased, despite the adoption of detailed regulations effective January 1, 2002 that established the basic framework for a fair claims process under ERISA section 503 – the final rule that is currently being delayed merely tweaks that existing framework.

Again, I urge the Department to not change the final rule or further delay its implementation. It was the product of a lengthy and reasoned rulemaking process in which the insurance industry had ample voice. The current effort to undo that hard work makes the Department and EBSA look like an agency that has been captured by the large corporations it is

supposed to regulate. I hope the current leadership at the Department is willing to do what is necessary to change that impression.

Sincerely,

/s/

James P. Keenley
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