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Via e-mail to e-ORI@DOL.gov

Timothy D. Hauser
Deputy Assistant Secretary for Program Operations
Employee Benefits Security Administration
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 am writing to request that the Department not modify or delay its final disability claims regulations (Final Regulation on Claims Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 (Dec. 19, 2016)), which are currently scheduled to go into effect on April 1, 2018.

I am a lawyer who has practiced in this field for twenty years. I have represented both plan administrators and plan beneficiaries during that time. For most of that time, I have assisted beneficiaries, and have relied on the current regulations on numerous occasions for help in interpreting what ERISA requires. The new regulations improve on the current regulations by ensuring that both administrators and beneficiaries know their respective rights and responsibilities. They also help to ensure that beneficiaries get a "full and fair" review as required by ERISA.

I understand the Department is now re-examining the regulations due to concerns raised by the insurance industry. However, these objections are not new. Instead, they have already been fully considered by the Department in promulgating the regulations. The regulations are based on policy choices that have been made by Congress, this Department, and the federal courts interpreting ERISA. Allowing further argument, and more delay, is inefficient and unproductive.

Furthermore, the insurance industry's primary objection to the regulations – that the regulations will be costly – is misplaced. This argument was made in various industry comments to the proposed rules before final adoption. After conducting due diligence, the Department concluded that costs would not outweigh the benefits.

The Department has asked for data addressing whether costs increased in response to the last set of rules applying to ERISA disability plans that became effective in 2002. However, such data already

exists. The Department's own statistics show that access and participation in employer-based disability insurance has increased, not decreased, between 1999 and 2014. This increase occurred despite a significant rise in employment in the service industry, in which employer-based disability coverage is uncommon.

This increase also occurred despite an increase in protections for beneficiaries arising from the following: (1) the 2000 disability claims regulations; (2) an increase in the number of states barring the use of discretionary clauses in disability insurance policies; and (3) a series of court decisions involving conflicted decision-making, exhaustion of claims, the need to discuss and explain adverse benefits decisions, and a participant's right to respond to new evidence. Despite all these developments, participation in disability benefit plans rose and the insurance industry thrived.

In short, there is no reason to revisit the regulations because the concerns raised by the insurance industry have already been considered and addressed. Furthermore, the concerns are without merit. There is no evidence to suggest that the new protections afforded by the proposed regulations will significantly harm insurers. To the extent there may be any harm, those harms are decidedly minor, and are outweighed by the benefits to plan participants. After all, it is the Department's obligation to faithfully execute the will of Congress, which has explicitly stated that the purpose of ERISA is to protect "the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001.

Very truly yours,

Peter S. Sessions, Esq.

PSS/nh