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Sent Via Email: e-ORI@dol.gov
ATTN: Phyllis C. Borzi, Assistant Secretary of Labor
Employee Benefits Security Administration ("EBSA")
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Re:	***Claims Procedure Regulations for Plans Providing Disability Benefits***
RIN No.:	***1210-AB39***
Regulation:	***29 C.F.R. §2560.503-1***

Dear Assistant Secretary Borzi:

I offer this letter in support of the DOL's proposed changes. I am an attorney who almost exclusively represents individuals in ERISA matters, specifically with regards to long-term disability claims under fully insured policies; over 90% of my practice is dedicated to plaintiffs' ERISA matters. In 2007, I began assisting claimants with internal appeals governed by ERISA. Since becoming licensed to practice law in January 2011, I have represented claimants in ERISA benefit matters both in the internal appeal process and in litigation.

The DOL's proposed changes to the appeals process, if adopted, will undoubtedly ensure a more full and fair review for claimants. The DOL is correct that disability and lost earnings can be a source of severe hardship for many individuals. Seemingly every day, I speak to claimants facing financial ruin due to a denial or termination of disability benefits. The prospect of a fair recovery for claimants with benefits governed by ERISA is poor, primarily because the potential relief available to our clients is limited, and the incentive for insurance companies to deny otherwise valid claims is great; in most instances, administrators are able to secure a deferential (and therefore highly favorable) standard of review and, even if claimants prevail under the more onerous standard of review, the courts provide relief by "remanding" claims back to the very conflicted entity that denied the claim in the first place.

The DOL's recommendations are valuable and critical to improving ERISA and providing claimants with a full and fair review. I provide a few specific comments below:

- **Independence And Impartiality - Avoiding Conflicts Of Interest**. I commend the DOL for addressing this very important issue, which recently brought confusion to at least one United States District Court facing the challenge of how to evaluate what it means to be a biased medical reviewer. See *Mullin v. Scottsdale Healthcare Corp. Long Term Disability Plan*, 2016 U.S. Dist. LEXIS 2927. The courts do not know how to solve the problem of a biased reviewer and therefore the DOL should step in to provide instruction to the courts in this regard. In *Mullin*, my attempt to enjoin the use of biased reviewers resulted in the court agreeing that such an injunction would be "vague and unenforceable." The DOL could set standards to assist the courts, and I believe the proposed regulations provide the ideal opportunity for the DOL to do so. Currently, administrators hide behind third-party vendors to argue that employed reviewers are unbiased and "independent." Administrators routinely claim to conduct no inquiry into the vendors or to keep any statistics on the reviewers that they employ through vendors. Essentially, they use their own ignorance to avoid responsibility to be impartial and investigate conflicts. There should be requirements prohibiting an administrator not only from contracting with reviewers who are known to support denials, *but also from contracting with vendors known to provide reviews which favor the denial of claims.* Administrators should be held accountable for the vendors they choose to employ, especially when those administrators have a direct financial incentive to deny claims.
- **Right To Review And Respond To New Information Before Final Decision.** I support the DOLs proposed changes in this regard, but I want to highlight a common issue that I face in my practice. Often, the administrator will use the need for (or acquisition of) new evidence to "toll" its own deadlines to make a determination under ERISA. This is especially frustrating for claimants when the new information should have been secured prior to a denial of benefits. I would like to emphasize the importance of the DOL's comments – that the evidence should be furnished *as soon as possible* to the claimant for a response and, additionally, that an administrator cannot "toll" its deadline or otherwise justify an additional 45 days to make a determination based on the new evidenced. Instead, the DOL should be clear that an administrator must identify or generate the new evidence *before the expiration of the 45-day period*, as well as provide the claimant with such evidence before the expiration of the 45-day period.
- **Statute of Limitations Issue Post-*Heimeshoff*.** I routinely ask administrators to clarify the statute of limitations date on behalf of my clients, and virtually every time, I am told that I am improperly asking for a legal conclusion and refused a straight answer. The DOL is correct that administrators are in the best position to provide clarification on the statute of limitations. While my clients are fortunate to have my legal representation to assist in interpreting the plan provisions, it should not be

such a difficult task for claimants to determine when they must bring a lawsuit in order to enforce their rights. Of the many obstacles a claimant faces in filing lawsuits to recover benefits, this should not be one of them, especially when it would be relatively easy for an administrator to clarify this issue for claimants.

- **Notice of Right to Retain Counsel for Appeal.** Often, ERISA claimants who have been wrongly denied disability benefits do not realize that they have the right to be represented in the administrative appeal process. Given the importance of developing the administrative record in these claims, administrators should be required to specify this right to representation in denial letters. Moreover, I often speak to claimants who had been encouraged by claims specialists prior to appealing to "hurry up" and submit an appeal without being told of the importance of building the record prior to litigation. I propose that the DOL adopt a regulation that benefit denials must advise claimants of their right to hire an attorney to represent them in the appeal phase. The Social Security Administration does this. There is no reason to hide this right from claimants who are bound to the evidence they develop on appeal in the event they must proceed to litigation.

Thank you kindly for considering my comments. I am available for any questions or further comments. I sincerely appreciate the DOL's efforts to provide a full and fair review to claimants through its proposed changes to ERISA's regulatory requirements.

Regards,

ERIN ROSE RONSTADT