

# PUBLIC SUBMISSION

<b>Received:</b> October 24, 2017
<b>Status:</b> Pending_Post
<b>Tracking No.</b> 1k1-8zei-76fd
<b>Comments Due:</b> December 11, 2017
<b>Submission Type:</b> Web

**Docket:** EBSA-2015-0017

Claims Procedure for Plans Providing Disability Benefits; Extension of Applicability Date

**Comment On:** EBSA-2015-0017-0291

Claims Procedure: Plans Providing Disability Benefits

**Document:** EBSA-2015-0017-DRAFT-0376

Comment on FR Doc # 2017-22082

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## Submitter Information

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## General Comment

To Whom It May Concern:

The Department of Labor has adopted new regulations applicable to disability insurance companies and long term disability claims. This was accomplished after the Department took many months to conduct an extensive notice and comment period from various interested parties, and many more months to consider those comments. Employee plans and their insurers were extensively involved in that process which resulted in the new regulations scheduled to become applicable to new disability claims filed on or after January 1, 2018. Now, the Department's proposed delay in the implementation date of the final regulations seems entirely unnecessary and raises issues about transparency in the rule-making process.

I am an attorney practicing primarily in the State of Colorado. Over the years, the

primary focus of my law firm, which now includes myself and three other attorneys, has gravitated towards representing individuals with denied disability, health, life and accident death and dismemberment claims. The vast majority of such claims fall under employer-provided plans for which the Employee Retirement Income Security Act (ERISA) typically governs.

While the limited practitioners in this practice area understand the statutory framework and the applicable regulations, the vast majority of attorneys that may find themselves working on one of these cases do not. I have had many conversations with attorneys who simply do not understand the claim process, the rights and obligations of both the plan and the plan participant, and the extreme importance of submitting a well-supported internal review request of an adverse benefit determination. The attorneys to whom I refer are often shocked and dismayed at how these procedures work and the clear advantage that is granted by these regulations to plans and their insurers. They are even more astounded by the limited remedies that exist under the statutory and regulatory framework. Discussing these same topics with a member of the general public or a potential new client seeking representation of a denied claim is even more frightening. Frankly, both the current regulations and the new ones do not go far enough in providing adequate notice to a denied claimant about the issues involved in an adverse benefit determination and the procedures to follow to, hopefully, perfect his or her claim and avoid the filing of a lawsuit. Many such individuals will contact our office before submitting their own internal appeal, which in my experience, is an absolute necessary step in order to successfully appeal a wrongly denied benefit or to at least have the claim adequately prepared for litigation. A lay person or an inexperienced attorney does not appreciate the difficulties associated with handling a denied ERISA benefits claim. There are many plans and particularly insurers who have manipulated the administrative appeal process. The new proposed rules which are already in effect and become applicable to employee benefit claims filed in 2018 serve as a significant clarification of how the administrative process should proceed and are very welcome by practitioner and plan beneficiaries.

The proposed delays in the application of these new rules will most definitely serve to prejudice these same beneficiaries. It appears to me that the insurance industry is attempting to assert its influence over the Department by manufacturing an excuse for delaying the full implementation of these new rules. The effective date of the regulations is apparently being delayed by 90 days without any public disclosure of communications between plans and the insurance industry with the Department which assert that the cost to implement these new regulations is simply too high. I have seen no studies or other data which supports this argument. The purpose of these rule changes was to make the ERISA claims process more fair to the plan participants and

beneficiaries it was originally designed to protect. This delay, and the reasons which I understand to be at play, favors one set of interests (plans and insurers) over those protected participants and beneficiaries.

I am providing this comment to your Committee as it is impossible for these participants who are primarily affected by these changes to comment. Quite simply, the group of individuals who are to be protected by these new regulations (those filing claims on or after January 1, 2018) do not understand any of these issues, are not aware that a federal law exists which governs their claims or that the entire process is governed by a set of federal regulations. It is my responsibility and that of the Committee to protect these individuals.

I ask that you not delay the effective date of the regulations in any way.

Thank you for considering my comments. Shawn McDermott