



October 27, 2012

Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210
Attn: State Savings Arrangement Safe Harbor

RIN: RIN 1210-AB39

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we write in response to the request for comments on the Proposed Regulation pertaining to the Extension of Applicability Date for Claims Procedure for Plans Providing Disability Benefits issued by the Department of Labor (DOL).¹ The Chamber supports a delay of the January 1, 2018 effective date and urges the DOL to consider a delay period longer than the proposed 90 days.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees.

At the end of 2015, the DOL proposed to change the disability claims regulations by imposing the medical claims regulations under the Affordable Care Act (ACA) onto disability claims. These changes were not required under the ACA—and, arguably, the omission of this directive is an indication that Congress purposely did not intend to expand the ACA rules to disability insurance claims. The proposed regulation was based on the DOL's false premise that there was a problem with the disability claims procedure under the Employee Retirement Income Security Act of 1974.² Despite significant opposition, the DOL finalized the rule at the end of 2016 with a January 1, 2018 effective date.³ Moreover, by the DOL's own admission, there was minimal economic analysis or reasoning offered for these substantial changes.⁴

¹82 Fed. Reg. 47409 (October 12, 2017).

² 80 Fed. Reg. 72014 (November 18, 2015).

³ 81 Fed. Reg. 92316 (December 19, 2016).

⁴82 Fed. Reg. 47411, stating that “[t]he RIA acknowledged that the Department did not have sufficient data to quantify the benefits associated with the Final Rule.”

At the very least, this rule requires a delay to allow the DOL to re-examine the need for the rule and provide an appropriate cost-benefit analysis of all proposed changes. While we appreciate the delay that the DOL has proposed, we urge the agency to consider a longer delay period than the proposed 90 day delay after the January 1, 2018 effective date.

DOL has asked for data within a 60 days comment period ending December 11, 2017. Under this time line, the DOL will have less than 4 months to review and analyze the data, determine if and what changes need to be made, and propose and finalize a new rule. It is unreasonable to expect a full and thoughtful review of the rule, a substantive review and analysis of the data, a meaningful discussion between interested parties, and a thoroughly vetted and workable rule within this less than 4 month timeframe. Instead, the DOL should take the appropriate time needed to ensure that the rule provides appropriate benefits and minimal burdens.

Furthermore, stakeholders need certainty. For the reasons detailed above, it is highly unlikely that a final rule will be issued by the end of the 90-day delay. Therefore, the DOL will have to decide whether to delay the rule again or to allow the rule to go into effect. This choice leaves stakeholders wondering how to proceed. They can move forward under the current rule and risk having to undo those steps if the rule is ultimately modified or rescinded. In the alternative, they can choose to do nothing and then have to attempt compliance in a constrained time period. The agency should not set up a scenario that creates such poor choices.

To ensure that there is an appropriate rule, an adequate review, and certainty for stakeholders, the DOL needs to delay the effective date of the rule for longer than the proposed 90 days. We recommend that the DOL delay the rule for the longer of 12 months or until a final rule is promulgated. In this way, the DOL can ensure that it takes the appropriate time to promulgate an effective rule without upsetting the current market for disability insurance.

Thank you for your consideration of these comments. We look forward to working with you to create a rule that supports and expands the private disability insurance system.

Sincerely,



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