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General Comment

Thank you for the opportunity to comment on the concern expressed about the proposed new regulations. I am an attorney in Ohio, and I have been representing disabled individuals seeking benefits under ERISA-regulated disability plans for 25 years.

I am writing to take exception to the industry's concern that the new regulations will increase litigation and, therefore, increase costs. Quite the contrary. Imposition of the new claims regulations should reduce the transaction costs associated with disability claims because they will bring uniformity to claims administration that does not now exist.

I understand one of the industry's objections to be the requirement to evaluate evidence that contradicts the insurer's own conclusion - Social Security determinations, for example. For the most part, this rule already exists in the Sixth

Circuit, where I practice. Many claims administrators, however, seem to be unaware of this rule, so they make a determination without regard to adverse evidence. Because we understand the Sixth Circuit rule, we would litigate every such decision, with a high probability that we would prevail, at least to the extent of a court order remanding the claim to the claims administrator with instructions to evaluate the contrary evidence. All of these transaction costs can be avoided if the claims administrator considers the adverse evidence in the first instance.

The same is true of the regulation affording plan participants the opportunity to address the opinions of the insurers' medical reviewers before a decision becomes final. That, too, is a rule in some courts, but not in others. The claims process will become more efficient - and transaction costs thereby reduced - if all insurers administered these claims uniformly.

I also wish to address the regulation clarifying the circumstances under which litigation can be filed if an insurer does not resolve a claim in a timely manner. The individuals I represent are usually in pretty tough shape by the time I become involved with their claim. They are sick or injured and cannot work, and they have no income. The Social Security claims process takes forever. In most cases their only hope of income is the long-term disability insurance they purchased, or that their employers purchased on their behalf. Thus, the claims processing regulations reasonably require insurers to decide claims within specified time limits. I do not, however, typically rush to the courthouse once the claims processing deadline arrives because, like anyone else, I have no interest in needlessly driving up transaction costs. But at some point, with a claimant who is desperate for income and a claims administrator who seems not to sense any urgency, we must be able to proceed to court. I have trouble believing that this regulation will increase the insurer's transaction costs, but even if it does, that cost must be weighed against the cost of continuing to deny a claimant the benefit to which she is entitled. After all, with no income, these individuals become dependent upon the so-called social safety net, the costs of which are borne by the taxpayer.

Thank you for the opportunity to comment.