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December 11, 2017

Via Email: e-ORI@dol.gov

Office of Regulations & Interpretations
Employee Benefits Security Administration, Rm. M-5655
US Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Attn: Deputy Assistant Secretary Hauser

**Re: Implementation of Claims Procedure Regulations
For Plans Providing Disability Benefits
RIN #1210-AB39
Regulation: 29 CFR §2560-503**

Dear Sir:

I am writing to strongly oppose any attempt at further delaying the implementation of the revised Disability Claim Regulations which are scheduled to go into effect on April 1, 2018. (Final Regulation on Claim Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 December 19, 2016).

Simply stated, the concerns raised by the industry about these essential modifications are not new. Rather, these objections appear to be simply a re-argument of the merits of the final Rules. Since these changes have been thoroughly vetted and considered in the context of the policy choices of Congress, this department and the federal courts interpreting ERISA, further re-hashing of these old arguments that have already been considered and rejected, is not warranted.

I have handled hundreds of ERISA claims for beneficiaries over the past three (3) decades as a practicing attorney in New York and New Jersey. I have seen first-hand what damage the current regulatory scheme can cause to disabled individuals and their families. There are real problems with the way ERISA affects every day citizens in this country and the changes that have been made in these regulations are essential to provide ERISA claimants even the most

rudimentary due process protections which are readily available to our citizens in other areas of the law. I have watched hundreds of clients suffer catastrophic personal and financial losses as a result of the serious inequities which have evolved in the interpretation and enforcement of ERISA and its underlying regulations. The current modifications made to these regulations are absolutely essential to providing some modicum of fairness to the claims handling process.

Arguments about increased costs have already been considered before final adoption. It was determined that costs would not outweigh the benefits. Nothing new in the way of probative evidence on this issue has been offered by the industry, which would warrant re-consideration of the issue. To the extent that the department needs verification on this issue, it need only refer to its own Bureau of Labor statistics.

I think it is also significant to note that despite similar concerns about increased premiums by the adoption of statutory bans on discretionary language clauses throughout the United States, access and participation in such plans has increased according to the Bureau of Labor statistics.

It also bears mentioning that two major insurance carriers (Unum and Cigna) have been the subject of extensive investigations and regulatory action over the past two decades as a result of their systematic abusive claims handling practices, much of which occurred under the auspices of ERISA. Many of these abuses occurred as a direct result of the inadequate protections afforded beneficiaries under federal law, and specifically under the DOL regulations here at issue. This history further undermines the credibility of the industry's "concerns" about increased costs.

Indeed, history shows, and this department has recognized that disability claims administrators have been needlessly adversarial towards ERISA claimants, notwithstanding their so-called "fiduciary" status. The industry's claim that these revised rules are bad for participants, is simply not credible.

Moreover, to the extent that these increased protections bring ERISA disability claims administration more in line with the reasonable expectations of employee beneficiaries, the costs of same are far outweighed by the benefits to the individuals who need protection. I cannot tell you how many clients have been truly shocked to learn how systematically unprotected they are under ERISA's deficient due process requirements. The proposed amendments seek to address just a small aspect of those deficiencies, and are but a modest attempt at reform.

On balance, these revised regulations reasonably attempt not to provide important protections where they currently do not exist. They are not onerous, they are not burdensome, and they are not overbroad.

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It bears repeating that these changes were enacted after a complete and exhaustive vetting process pursuant to the Administrative Procedure Act. There is simply no reason to revisit the matter again simply because the industry prefers to maintain the *status quo* regardless of its impact on individuals.

It is respectfully submitted that the new regulations should be implemented as currently scheduled, without any further delay.

Should you require any additional information or should you have any questions, please feel free to call me.

Very truly yours,

USCHER, QUIAT, USCHER & RUSSO
A Professional Corporation



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