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Appointing an Authorized Representative for Claims and Appeals

On February 27, 2019, the U.S. Department of Labor (DOL) issued an Information Letter in response to an inquiry from The Justus Group, L3C (Justus) regarding its ability to act as an authorized representative for ERISA claimants and receive notices and information with respect to that claim and/or appeal. The Letter indicates that Justus acts as a health advocate, assisting participants with claims and appeals with respect to health plans.

The Letter refers to Benefit Claims Procedure Regulation FAQs, FAQ B-3, which provides that if a claimant clearly designates an authorized representative to act and receive notices with respect to a claim, the plan should direct all related information and notices to that representative, and not the claimant, unless the claimant requests otherwise. This FAQ also notes that it is important for the plan and claimant to make clear the extent to which the authorized representative is acting on behalf of the claimant.

The Letter also provides that the plan must include any procedures for designating an authorized representative in the plan's claims procedures and in its SPD or separate document accompanying the SPD.

Health and welfare plans are seeing an increase in third parties bringing appeals following an adverse determination of a claim, and it is not always clear if the party bringing the claim has been appointed by the participant. Given these increased appeals from third parties, we recommend employers review the plan documents and SPDs and clarify, as appropriate, the procedures that must be followed for a participant to appoint an authorized representative. Retirement plans should also do the same. Keep in mind that third party administrators may also have their own procedures for appointing a representative. Therefore, the procedures set forth in the SPD must be drafted to take into account the possibility that one or more of the plan's TPAs have their own procedures.