



## Alerts

### DOL Letter Indicates ERISA Plan Administrators Must Produce an Audio Recording or Transcript of Call Between Claimant and Plan Representative Upon Request

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*The LHD/ERISA Advisor*

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An ERISA plan administrator must, if requested by a claimant contesting an adverse benefits determination, produce a copy of an audio recording or transcript of a telephone conversation between the claimant and a plan representative, [according to a recent interpretation](#) of ERISA's implementing regulations issued by the U.S. Department of Labor.

The opinion came in the form of an Information Letter issued in response to an inquiry from a claimant's attorney who sought guidance after a plan administrator declined to produce an audio recording of a conversation on the grounds that a record of the call had been produced and the recording was for quality assurance purposes only. The DOL held that these justifications were inconsistent with ERISA's regulations.

Under ERISA section 503, every employee benefit plan must "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." ERISA's implementing regulations require that the claims procedures of a plan will "provide that a claimant shall be provided, upon request . . . copies of, all documents, records, and other information relevant to the claimant's claim for benefits." 29 CFR 2560.503-1(h)(2)(iii).

The regulations further state at 29 CFR 2560.503-1(m)(8) that a document, record, or other information is "relevant" if it "(i) was relied upon in making the benefit determination; (ii) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; (iii) demonstrates compliance with the administrative processes and safeguards required pursuant to [ERISA's regulations] . . ."

In its Information Letter, the DOL cited subsection (ii), opining that the recording must be produced because it was "generated in the course of making the benefit determination," even though it may not have been relied upon for the ultimate decision. Regarding the plan administrator's "quality assurance"

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argument, the DOL noted that subsection (iii) addresses materials relating to compliance with ERISA's regulations and safeguards. "Thus, the fact that a recording was made for quality assurance purposes would support it being subject to a disclosure request for relevant 'documents, records, and other information' under 29 CFR 2560.503-1(h)(2)(iii)."

## Significance of Decision

The Information Letter falls short of constituting formal DOL guidance on the issue. However, it does provide persuasive authority that plan administrators should carefully consider when presented with a request for an audio recording or transcript of a call between a claimant and a plan representative.

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