

## DOL Proposes to Delay Application of Disability Claims Regulations

The DOL has proposed postponing application of the final disability claims procedure regulations to ERISA welfare and retirement plans providing disability benefits until April 2, 2018. It is also soliciting comments on the cost and administrative burdens of the claims procedures to determine whether alternative procedures may be appropriate.

### Background

In December 2016, the DOL issued final regulations that set out new requirements for claims procedures of ERISA plans that provide disability benefits. These final regulations, which became effective on January 18, 2017, stated that the new rules would apply to claims for disability benefits filed on or after January 1, 2018. For an analysis of the final regulations, see our [January 11, 2017 For Your Information](#).

### Proposed Rule

The DOL has just proposed a [rule](#) that would postpone application of the final regulations for 90 days – through April 1, 2018. The stated purpose for the delay is to enable the DOL to obtain additional public input on the impact of the final regulations on affected entities and then consider whether it supports regulatory alternatives to the final regulations. This solicitation is made pursuant to Executive Order 13777, issued by President Trump in February 2017, which directed federal agencies to evaluate existing regulations and make recommendations on those that can be repealed, replaced, modified to make them less burdensome, or that are outdated.

#### What benefits are subject to the final rules?

A benefit is subject to the special rules for disability claims if the claims adjudicator must make a determination of disability in order to decide the claim. This includes claims for:

- Short-term and long-term disability benefits
- Waivers of premium under a life insurance policy
- Disability retirement benefits

The special disability rules do not apply if the finding of disability was made by a third party for a purpose unrelated to making a benefit determination under the plan. For example, if a pension plan conditions eligibility for disability retirement benefits on a prior determination of disability by the SSA or by the employer's long-term disability plan, the claim would be subject to ERISA's rules for pension rather than disability claims.

The DOL requests the following input:

- Comments on whether the 90-day extension of the applicability date – through April 1, 2018 – is sufficient, and if not, why more than 90 days is needed
- Cost estimates for implementing each provision of the final regulations
- Data regarding the impact of the 2,000 final claims and appeals regulations on cost and access to disability benefits, including take-up rates
- Comments on any other matters germane to its review, including the merits of rescinding, modifying or retaining the final regulations

Comments regarding the sufficiency of the 90-day extension are due within 15 days of the date the proposed rule is published in the *Federal Register* (scheduled for October 12, 2017). Other comments are generally due within 60 days of publication. However, the DOL encourages commenters to let it know within the initial 15-day period whether a 60-day comment period is sufficient and specify how much additional time is needed. The DOL may consider whether to extend the comment period and further delay the applicability date.

## In Closing

The proposed delay in the application date for the disability claims procedure regulations is just that – proposed. So, while it is likely that delay will be implemented and possibly even extended by the DOL, plan sponsors need to monitor the situation and continue to comply with existing requirements. If they choose to comment, they should do so within the relatively short timeframes provided.

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