

CLIENT BULLETIN

DOL Keeps April 1, 2018 Effective Date For Disability Claims Regulations

No Further Delays for the Rule

In [Client Bulletin 2017-72](#), we announced that the DOL amended the disability claims procedures regulation to change the effective date from January 1, 2018 until April 1, 2018. This 90-day delay was necessary to enable the DOL to carefully consider comments and data as part of its effort, pursuant to [Executive Order 13777](#), to examine regulatory alternatives that meet its objectives of ensuring the full and fair review of disability benefit claims while not imposing unnecessary costs and adverse consequences.

On January 5, 2018, the DOL [announced](#) it had completed its review of the comments on the disability claims procedures regulation and had determined the information provided in the comments did not establish that the final rule imposes unnecessary regulatory burdens or significantly impairs workers' access to disability insurance benefits and there will be no further delays of the April 1 effective date..

As a reminder, the [Final Rule](#) governs claims procedures for plans providing disability benefits and revised the current rules by adopting certain procedural protections and safeguards for disability benefit claims that are currently applicable to claims for group health benefits pursuant to the *Affordable Care Act*. A [Fact Sheet](#) summarizes the changes. A redline version of the DOL claims regulations showing the changes made by the Final Rule is available by "[clicking here](#)."

Recall that the regulation applies to plans offering a "disability benefit." The criteria for determining whether a benefit is a "disability benefit" were explained in Footnote 3 to the final regulations:

A benefit is a disability benefit, subject to the special rules for disability claims under the Section 503 Regulation, if the plan conditions its availability to the claimant upon a showing of disability. If the claims adjudicator must make a determination of disability in order to decide a claim, the claim must be treated as a disability claim for purposes of the Section 503 Regulation, and it does not

matter how the benefit is characterized by the plan or whether the plan as a whole is a pension plan or a welfare plan.

On the other hand, when a plan, including a pension plan, provides a benefit the availability of which is conditioned on a *finding of disability made by a party other than the plan*, (e.g., the Social Security Administration or the employer's long-term disability plan), then a claim for such benefits is not treated as a disability claim for purposes of the Section 503 Regulation.

See FAQs About The Benefit Claims Procedure Regulation, A-9 (<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/benefit-claims-procedure-regulation>) (emphasis added.)

In addition, [DOL FAQ C-18](#) (PDF page 15), which states:

Q-C18: If a plan conditions continuation of disability benefit payments on a periodic confirmation of the claimant's disability and, in conjunction with such a confirmation, determines that the claimant is no longer disabled and, accordingly, terminates payment of benefits, must the plan treat the termination as an "adverse benefit determination" under the regulation?

A: Yes. Under the regulation, an "adverse benefit determination" includes any denial, reduction, or termination of a benefit. Accordingly, where a plan terminates the payment of disability benefits under such circumstances, the plan is required to provide the claimant a notification of adverse benefit determination and the right to appeal that determination consistent with the regulation. (See 29 CFR § 2560.503-1(m)(4), (g) and (h).) If, on the other hand, a plan provides for the payment of disability benefits for a predetermined, fixed period (e.g., a specified number of weeks or months or until a specified date), the termination of benefits at the end of the specified period would not constitute an adverse benefit determination under the regulation. Any request by a claimant for payment of disability benefits beyond the specified period, therefore, would constitute a new claim. (See 29 CFR § 2560.503-1(f)(3). Also see 29 CFR § 2560.503-1(f)(2)(ii).)

Therefore, if a Plan conditions its disability benefit on an SSA Disability Determination but retains the right to determine when a claimant is not disabled, it must still follow the new disability claims regulations. If a plan were to condition the termination of the disability benefits on an SSA determination of non-disability, then the new disability claims regulations would not apply. If the Plan does not often terminate disability benefits, the extra burden of the new disability regulations will be minimal.

See [Client Bulletin 2017-04](#), and [Benefit News Briefs 2017-56](#) for more details on the requirements of the disability claims regulation.

Action Item

Affected plans that have not been amended will need to do so by the April 1 effective date.

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