



## DOL delays applicability of disability claims procedures

Employee benefit plans that are subject to ERISA must follow certain benefit claims and appeals procedures. In December 2016, the Department of Labor (DOL) issued [final rules](#) that change the disability claims procedure rules to generally mirror those applicable to group health plans under the Affordable Care Act. The final rules were scheduled to be applicable to claims for disability benefits filed on or after January 1, 2018.

On November 29, 2017, the DOL issued a 90-day delay to the applicability date to allow the DOL to conduct an additional review of the rule. The final rules are now scheduled to be applicable on April 1, 2018.

### Overview

The final rules apply to claims for disability benefits in retirement plans, which may include nonqualified “top hat” plans. However, they do *not* apply when a plan provides a benefit conditioned on an independent disability finding made by a party other than the plan. *For example, if the retirement plan document provides that pension benefits shall be paid to a person who has been determined to be disabled by the Social Security Administration or under the employer’s long-term disability plan, the ERISA disability claims procedures do not apply to the retirement plan.*

The delay in the applicability date will allow the DOL to carefully consider comments and data as part of its effort to examine regulatory alternatives that meet its objectives of ensuring the full and fair review of disability claims while not imposing unnecessary costs and adverse consequences. The DOL expects that the delay of the applicability date will give sufficient time for the agency to review comments, reexamine the information and data submitted, and take appropriate next steps.

### Next steps

For plans to which the final rules applied, sponsors have been working to ensure that documents and claims procedures (e.g., plan amendments, summary plan descriptions/summary of material modifications, and administrative practices, etc.) would be updated prior to the applicability date.

Due to the potential for changes to the final rules, sponsors of individually designed plans and nonqualified “top hat” plans to which the ERISA disability claims procedures apply should discuss with their legal counsel whether to delay the adoption of any plan amendments and procedures intended to comply with the final rule. For sponsors of plans that use Prudential Retirement’s document services, Prudential will be awaiting further DOL guidance prior to distributing any amendments to plan documents regarding these updated procedures.

Prudential Retirement will continue to monitor activity regarding the disability claims procedure rules and will notify you of additional guidance on this topic.

#### Compliance Bulletin by Prudential Retirement

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