

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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October 27, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn: Claims Procedure for Plans Providing Disability Benefits Examination RIN 1210-AB39

Submitted electronically at e-ORI@dol.gov

Re: Solicitation of Comments on Claims Procedure for Providing Disability Benefits;
Extension of Applicability Date

Dear Ladies and Gentlemen:

The National Coordinating Committee for Multiemployer Plans (the “NCCMP”) appreciates the opportunity to respond to the solicitation of comments on a proposed 90-day delay of the applicability of the Final Rule published on December 19, 2016 concerning the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. The Final Rule is currently scheduled to apply to claims for disability benefits that are filed on or after January 1, 2018. The proposal would provide that the Final Rule would become applicable to claims for disability benefits that are filed after April 1, 2018.

Background on the NCCMP

The NCCMP is the only national organization devoted to protecting the interests of the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP’s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to working men and women who are employed by small and large businesses across the country.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization with members, plans, and contributing employers in every major segment of the multiemployer universe. Those segments include the airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking industries. Multiemployer plans are jointly trusted by management and labor trustees.

Proposed 90-Day Delay in Applicability Date

The NCCMP is concerned that shifting the applicability date would cause unnecessary confusion among plan sponsors and participants as to the effective date of the Final Rule. We also note that the Department has not announced what steps plan administrators can take to assure that they are operating in good faith and providing a reasonable claims and appeals process during the 90-day delay period.

For multiemployer plans, and indeed for most ERISA plans, plan administration is conducted based on a plan year schedule; frequently the plan year is January 1 through December 31. Plan administrators and sponsors tend to make revisions to plan benefits, documents, or administration based on the applicable plan year. Most ERISA regulations are also applicable based on a plan year. .

The Final Rule is currently applicable to claims for disability benefits filed on or after January 1, 2018. The proposal would delay the applicability date to claims filed after April 1, 2018. Consequently, for multiemployer plans that use a calendar year plan year, the new rules would be applicable mid-year. The proposed change would put unusual pressure on plan administrators and sponsors to modify plan administration mid-year. The revision would also have the unfortunate impact of putting plan sponsors who have already modified plan documents and procedures in the position of either complying with the documents which contain the newly-revised rules adopted in accordance with the Final Rule or delaying adoption of the requirements.

Plan sponsors have not been provided with guidance concerning the appropriate steps to take during the 90-day delay. The Department has extended applicability dates for other provisions on previous occasions, but it has also clarified the actions plan sponsors must take during the delay. For example, the Department could clarify that during the period before the applicability date, compliance with either the claims procedure regulations currently in effect or compliance with the Final Rule would be considered by the Department to be in compliance with the requirements of Section 503 of ERISA. The Department could also provide guidance as to whether plan sponsors should continue to work to implement the new Final Rule, assuming an April 1, 2018 effective date, or whether implementation efforts should cease pending the Department's review. Finally, the Department could clarify that action taken in good faith to implement a reasonable appeals procedure concerning disability claims would not result in a breach of fiduciary responsibility on behalf of the plan sponsor.

Comments on the Final Rule

The NCCMP previously submitted comments on the proposed disability claims rule. These comments, filed on January 19, 2016, requested that the Department address two issues when it issued final rules:

1. The rules should include the position in FAQ A-9 on the Benefit Claims Procedure Regulations that the disability claims rules do not apply to a benefit payable upon disability where the determination of disability is made by a third party, and
2. The rules should not apply to disability benefits provided by a pension plan but if they do, then certain changes to the proposed rule should be made. Specifically, the rules should

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clarify that the disability claims procedures do not apply to pension benefits based on third party determinations of disability; the rescission rule should not apply to disability pension benefits that are reduced or eliminated in accordance with the PPA (provisions relating to adjustable benefits), MPRA (suspension of benefits) or any similar law; and the rules should adopt a “good faith” standard for compliance with the new language requirements to enable plans to locate appropriate translation services.

The NCCMP appreciates that several of these requests were reflected in the Final Rule (see Footnotes 3 and 27 of the Preamble), and continues to support the remaining modifications to the claims procedure for disability claims. We intend to provide additional comments on these issues when responding to the Department’s call for submission of further information and data on the merits of rescinding, modifying, or retaining the Final Rule, due on or before December 11, 2017.

Conclusion

Multiemployer health and pension plans that provide disability benefits are concerned with complying with the applicable rules and assuring that plan participants have appropriate notice of the rules applicable to their claim. However, the proposed delay does not provide sponsors with clarity as to how to address claims during the 90-day delay. We respectfully request that the Department announce that plan sponsors are in compliance with Section 503 of ERISA if they administer disability claims either under the Final Rule or the rules applicable to such claims prior to January 1, 2018.

We look forward to working with the Department on this important issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Scott", is centered on a light gray rectangular background.

Michael D. Scott
Executive Director