



Plan Sponsor Council of America

Serving retirement plan sponsors for over 60 years

January 19, 2015

VIA EMAIL (e-ORI@dol.gov)

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: Attention: Claims Procedure Regulation
Amendment for Plans Providing Disability
Benefits

Re: Claims Procedure for Plans Providing Disability Benefits (RIN 1210-AB39)

Dear Sir or Madam:

The Plan Sponsor Council of America (“PSCA”) appreciates the opportunity to comment on the Department of Labor’s (“DOL”) proposed amendments to claims procedure regulations under the Employee Retirement Income Security Act of 1974 (“ERISA”) for plans providing disability benefits (the “Proposed Regulation”).¹

The PSCA was established in 1947 and is a leading consumer advocate for employers offering defined contribution and non-qualified deferred compensation plans to their employees. The PSCA is a diverse, collaborative community of employee benefit plan sponsors and related service providers working together on behalf of millions of employees to ensure the success of the voluntary employer-sponsored retirement system. Representing employers of all sizes and industries throughout the country, we offer a unique and valuable perspective on issues regularly confronted by that system. It is from this perspective that PSCA is providing its response to the Proposed Regulation, and we very much appreciate the willingness of the DOL to consider our views.

On November 18, 2015, the DOL published proposed amendments to claims procedure regulations for plans providing disability benefits under ERISA. The amendments would revise

¹ 80 Fed. Reg. 72014 (Nov. 18, 2015).

current rules primarily by adopting some of the procedural protections and safeguards made applicable to group health plans by the Affordable Care Act.

Normally the PSCA would not comment on regulatory activity that on its face seems to apply only to welfare benefit programs—in this case, long term disability plans. However, an issue has arisen that indicates that these regulations, once final, might impact certain retirement plans, including defined contribution plans, in a way that might not be readily apparent. The retirement plans at risk appear to include plans that condition the payment of benefits on account of disability on a determination of disability status made by the plan itself.

In November of 2000 the DOL issued guidance in a question-and-answer format (“Q&A’s”) related to the adoption of previous claims procedures rules. In those Q&A’s the DOL expressed the view that a benefit is a “disability benefit” under applicable regulations if the plan conditions its availability upon a showing of disability. The DOL went on to state that if a claims administrator must make a determination of disability to decide a claim then that claim must be treated as a “disability claim” for purposes of the regulations. The DOL concluded that plans, including retirement plans, that provide benefits conditioned upon such a determination of disability must maintain procedures for claims involving such benefits that comply with the requirements of the regulation applicable to disability claims—a position that if still valid seems to expose these plans to these new claim procedure regulations.

The DOL noted in the above-referenced Q&A’s that special rules for disability claims need not be applied in a situation in which a plan provides a benefit based on a finding of disability where the determination of disability status is made by a party other than the plan. With respect to retirement plans, examples cited by the DOL include plans that provide that retirement benefits are available either when a participant has been determined to be disabled by the Social Security Administration or when a participant has been determined to be disabled under the employer’s separate long term disability plan. Both of the examples are common design features for retirement plans, including defined contribution plans.

The standards set out by the DOL in the Q&As in 2000 seem equally applicable in the context of the Proposed Regulations. However, the Proposed Regulations do not expressly incorporate these standards to make it clear that the special rules for disability claims that are set out in the Proposed Regulations need not be applied in a situation in which a plan provides a benefit based on a finding of disability where the determination of disability status is made by a party other than the plan. Accordingly, the PSCA requests that the Proposed Regulations be revised to explicitly incorporate these standards to provide meaningful and needed clarification for sponsors of retirement plans without in any way affecting the stated goals in the DOL in issuing the Proposed Regulations.

As in other matters affecting the retirement industry, the PSCA wants to be a resource to the DOL as we move toward the issuance of a final rule in this context. We appreciate the opportunity to comment and look forward to working with the DOL as it considers these matters.

If you have any questions regarding this comment letter, please feel free to call me at 202-778-3006.

Respectfully submitted,



Richard P. McHugh
Vice President of Washington Affairs