

Questions and Answers Relating to Revised Disability Claims Procedures

Q-1 Why is MassMutual providing a Summary of Material Modifications (SMM)?

A-1 In 2017, the Department of Labor (DOL) finalized regulations relating to the disability claims procedures for retirement plans that are subject to Title I of ERISA. This year, the DOL announced that the regulations would become effective on April 1, 2018 with no further delay. In anticipation of this, MassMutual included a provision in its 2017 Interim Amendment to reflect the new claims procedures for disability benefits under the plan. Your current Summary Plan Descriptions (SPDs) provides limited detail on the procedures for participants claiming benefits relating to disability. With the issuance of the revised DOL regulations, we believe that this SMM provides helpful guidance to plan sponsors who make disability claim determinations for participants under their plans.

Q-2 Do the revised disability claims procedures impact all plans?

A-2 No, the new regulations only apply to plans that are subject to ERISA. However, the regulations do not apply if a plan administrator does not make the determination of disability (such as where disability is determined by the Social Security Administration or where a participant's eligibility for disability benefits is determined under employer's long-term disability program). Similarly, the regulations do not apply if the plan does not provide any benefits based on disability. In many plans, disability accelerates vesting, waives allocation or accrual requirements, and/or accelerates distributions when a participant severs employment due to disability. These plans would be subject to the new regulations if the plan administrator is exercising discretion in determining whether a participant is disabled.

Q-3 Can I amend my plan to either remove the disability benefits or modify the definition of disability so that the claims procedures will not apply to the plan?

A-3 Yes, provided the amendment does not result in the impermissible cutback of IRC §411(d)(6) protected benefits. The determination of whether there is an impermissible cutback of benefits can be a complex legal determination. For example, amending a plan to base disability on a Social Security determination would be permissible if the plan's definition of disability is the same as the definition for Social Security purposes (i.e., the inability to engage in any substantial gainful activity due to any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months). If, on the other hand, a plan sponsor wants to amend its plan to eliminate disability benefits, then the ability to do so may be limited because these are typically protected benefits (e.g., accelerated vesting) that cannot be eliminated for existing benefits.

Q-4 When should we provide the SMM to plan participants?

A-4 We recommend that you provide the SMM as soon as possible. Under the DOL timing rules, the SMM should be provided no later than 210 days after the close of the plan year for which the modification was adopted. The revised disability claims procedures were effective April 1, 2018.

Q-5 If the new disability claims procedures do not apply to my plan, do I need to send the SMM to plan participants?

A-5 We recommend you review your plan's provisions with the **plan's legal counsel and/or other experienced advisors** to determine if the procedures apply to your plan prior to distributing the SMM to plan participants.