**Disability Claims Procedures FAQs**

**Is a plan amendment required?**

No plan document amendment is required if you are using an FIS document and have not modified the claims procedures provisions of the plan. We provided an amendment because some providers wanted one “just to be safe”. Many of our plans either incorporate whatever outside procedures are being used by the plan administrator or they have procedures that are more liberal than the new rules. Thus, complying with the more restrictive rules of the new regulations would always satisfy the more liberal rules contained in the plan (*i.e.*, compliance with the new rules would always satisfy the requirements under the old rules).

**Are the regulations effective on April 1, 2018 or April 2, 2018?**

It is not entirely clear from the Department Of Labor (DOL) guidance. Complying with the rules on April 1, 2018 would be a safe option (noting it’s unlikely a claim will be filed on April 1 because it will be Sunday).

**Is a Summary of Material Modifications (SMM) required?**

Yes. **See DOL Regulation Section 2520.102-2(s)**. The claims procedures must be included in the SPD or furnished as a separate document that accompanies the SPD.

**When must be the procedures be provided to participants?**

You would need to provide the procedures if you deny a claim based on disability. With respect to all other individuals, the DOL requires that an SMM be provided no later than 210 days after the close of the plan year in which the change is adopted (*i.e.*, on or before July 1, 2019 for a calendar year plan).

**Do the new procedures apply to the plan if the plan is using a definition of disability that is the same as the definition used by Social Security?**

The definition of disability is subjective and therefore the answer to the question depends on who is making the determination of whether the claimant meets the definition of disability. If the plan administrator is making the determination, then the new procedures apply. If, however, the Social Security Administration is making the determination, then the new procedures do not apply. Similarly, if a plan considers an individual to be disabled if the individual is determined to be disabled under an employer's disability insurance policy, then the new rules do not apply to the plan (the disability plan is probably subject to the rules). The key factor is that if the plan is making a subjective determination of whether someone is disabled, then the new rules apply in order to afford the claimant a fair and impartial claims review process.