

March 14, 2017

Mr. Gary Cohn
Director
National Economic Council
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Andrew P. Bremberg
Director
Domestic Policy Council
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Edward C. Hugler
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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Re: Department of Labor Disability Claims Regulation

Dear Director Cohn, and Director Bremberg, and Acting Secretary Hugler:

We write to urge you to quickly rescind the U.S. Department of Labor's ("DOL") final rule amending disability claims procedures (81 Fed Reg. 92316 (Dec. 16, 2016), the "Regulation") under the Employee Retirement Income Security Act of 1974 ("ERISA"). The Regulation is inconsistent with congressional intent because it inappropriately applies the Affordable Care Act claims procedures to disability plans and will compromise working Americans' ability to protect themselves from the financial risk of a disabling illness or injury.

Disability insurance provides working Americans with crucial income protection from unexpected disability due to illness or injury. Access to disability insurance depends on affordability, which is directly affected by regulatory, administrative, and litigation costs. Employers voluntarily provide disability insurance plans, and they are extremely sensitive to policy cost increases. Additionally, recent data indicates that workers typically underestimate their risk of incurring a disabling illness or injury and go without the income protection they need. This means that any additional burdens placed on the voluntary employer system must clearly outweigh the costs they impose. Otherwise, employers may reduce and/or eliminate altogether disability income coverage for their employees, and fewer employees will have adequate income protection should they become unable to work due to sickness or accident.

There can be no doubt that the Regulation very significantly increased the administrative burden on employers and carriers and that this additional burden will significantly increase the cost of providing disability income protection. For example, the Regulation --

- Complicates the processing of disability benefits by imposing new steps and evidentiary burdens in the adjudication of claims, and forcing plans to consider disability standards and definitions different from those of the plan;
- Imposes these new complications without allowing any additional time in which to consider the claim and explain the ultimate decision to the claimant;
- Explicitly tilts the balance in court cases against plans and insurers, undoing a statutory and regulatory scheme that has worked for decades; and
- Creates perverse incentives for plaintiff's attorneys to side-step established procedures and clog the courts for a resolution of benefit claims.

Because of these new burdens, fewer Americans will have access to disability insurance. The practical result is that more families and taxpayers will have to bear the financial risk of a disabling illness or injury. Additionally, the vast majority of plans provide very helpful return-to-work assistance to help disabled individuals return to the labor force. Without access to disability income coverage in the employment context, many individuals who become disabled will not be able to avail themselves of this type of return-to-work assistance, with the result being increased reliance on, and cost to, related state and federal public programs (such as federal Social Security Disability Insurance).

The Regulation is particularly problematic because DOL failed to demonstrate that there are existing problems associated with disability claims adjudication that require regulatory action. Disability insurance claims procedures are highly regulated with many state and federal consumer protections, and disability claimants already have a full and fair claims review process that balances the rights of claimants with the need for operational and cost efficiency. Despite the existing consumer protections, DOL elected to apply the Affordable Care Act claims procedures to disability plans. That is inconsistent with the Congressional intent behind the Affordable Care Act and ERISA.¹ The Regulation is also inconsistent with DOL's long-standing guidance distinguishing disability and medical claims.

For the sake of working Americans and their families, we urge the Administration to take immediate action to rescind the Regulation so that people will continue to have access to affordable, high quality disability income protection. We would appreciate the opportunity to meet with you at your earliest convenience to discuss our concerns. Michael Kreps of the Groom Law Group (202) 861-5415 would be happy to coordinate such a meeting.

Sincerely,

American Benefits Council

American Council of Life Insurers

America's Health Insurance Plans

Cigna

The ERISA Industry Committee

Financial Services Roundtable

Sun Life Financial

Unum Group, Inc.

¹ Congress specifically intended for ERISA to "to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Conkright v. Frommert*, 130 S. Ct. 1640, 1644 (2010) (quoting *Varity Corp. v. Howe*, 116 S. Ct. 1065 (1996)).