

2012 ERISA Advisory Council

Managing Disability Risks in an Environment of Individual Responsibility

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Description

Long-term disability benefits are an important compensation feature, and have traditionally been a component of defined benefit pension plans (DB plans) that were designed to incorporate disability provisions as an integral part of the plan. Additionally, some employer-sponsored DB plans were designed to permit benefit accruals to the employee during periods of disability, sometimes in conjunction with long-term disability insurance sponsored by the employer. In some cases, under the DB plan, the disability benefit would be provided in the form of a disability pension that commenced prior to normal retirement age, and in other cases as a disability benefit up to normal retirement age with the provision of a retirement benefit commencing at retirement age.

As employer-sponsored retirement benefit programs have shifted from DB plans to defined contribution plans (DC Plans), and as people have become more responsible for their own retirement planning, the responsibility to secure disability benefits has also shifted to employees/retirees. In the employment relationship context, the shift away from providing disability benefits through DB plans to providing the disability benefit through the use of employer-offered insurance has produced differences with respect to coverage, waiting periods, and gaps in coverage.

In a DC plan environment, when a participant is determined to be disabled, the account balance under the DC plan is typically paid in the form of a single lump sum payment. Additionally, even when the account balance is not paid out upon disability, generally, there are no continued accruals for the participant during the period of disability. Efforts to address this impact through plan design appear to be hampered by current regulatory impediments or other barriers.

The council will examine the result of this continuing shift to DC plans and the impact on access to employer-provided long-term disability coverage, in the context of a financially secured retirement for America workers.

Objective and Scope

The Council's examination will focus on the following:

What Are Employees Offered?

- What are employer's current approaches to providing long-term disability coverage, and the number of employees and the cross-section of employees covered under these approaches?
- How do the coverage standards under insured plans, Social Security and the Americans with Disabilities Act impact access to disability benefits under these programs?

- What differences exist with respect to disability coverage needs where the basic retirement plan is a DC plan rather than a DB plan?

What Retirement Income Gaps Are Created During a Period of Disability?

- What gaps exist currently in long term disability coverage?
- What is the impact on retirement, if any, when DC account balances are completely or partially paid out because of disability?
- Are there current regulatory barriers that negatively impact employers' ability to provide desirable disability coverage in the employment relationship?
- What DC options exist to encourage asset retention in DC plans, that may include disabled participants having access to DC assets short of final distribution, but within an environment that permits and encourages disabled participants to continue efforts to save for retirement during periods of disability?

What Role Can the DOL Adopt to Assist Participants with Respect to Managing Disability Risks

- What are the best methods/approaches DOL can develop to improve outreach and education designed to:
 - encourage employers to improve coverage in their insured LTD plans;
 - encourage employees who do not have access to coverage to consider obtaining private disability insurance;
 - facilitate a better understanding for both employers and employees of the retirement income needs during periods of disability;
 - educate individuals on how periods of disability can negatively impact retirement savings and ultimately financial stability during retirement years;
 - advocate best practices and effective tools focused on how disabled employees can best manage sources of income during periods of disability.

What Role Can the DOL Undertake with Respect to Assisting Employers Develop and Offer Effective Disability Benefit Designs

- What ERISA regulatory changes may be needed to ease and/or remove current barriers regarding pension plan designs that are created to provide improved disability benefit coverage?
- What role can DOL adopt with respect to initiate discussions with the Treasury Department with the goal of assisting employers to adopt benefit designs intended to protect retirement income during periods of disability?
- What revisions, if any, can be made to the claims regulations to explicitly address the application of the full and fair review standard as applied to disability plans?
- Whether certain rules could be adopted under the claims regulations to address whether offsets to private long-term disability benefits based upon projected Social Security benefits are appropriate in cases where the covered participant is denied Social Security disability benefits; and, to enable a clear determination of whether a full and fair review of disability benefit claims adequately addresses offsets?