



December 11, 2017

Department of Labor  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
200 Constitution Avenue, NW  
Washington, DC 20210

**RIN: 1210-AB39**

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we write in response to the request for data and information regarding proposed Extension of Applicability Date for Claims Procedure for Plans Providing Disability Benefits issued by the Department of Labor (DOL).<sup>1</sup> The Chamber submitted comments supporting a delay of the comment period on October 27, 2017.<sup>2</sup> This letter addresses the request for comments providing data or otherwise germane information to the examination of the merits of rescinding, modifying, or retaining the rule that was finalized in December 2016, titled Claims Procedure for Plans Providing Disability Benefits (Final Rule).<sup>3</sup>

Based on input from our members, the Chamber believes that a full review and reconsideration of the rule is needed. The rule as promulgated endangers the viability of the private disability insurance system, will likely result in loss of access to private employer-sponsored disability insurance benefits for hundreds of thousands of employees, and result in further financial strain on the already burdened public Social Security disability insurance system. The Chamber recommends that the DOL withdraw the current rule and work with all stakeholders to fashion a rule that supports and expands the private disability insurance system.

### **Introduction**

At the end of 2015, the DOL proposed to change the disability claims regulations by imposing the medical claims regulations under the Affordable Care Act (ACA) onto disability claims. These changes were not required under the ACA—and, arguably, the omission of this directive is an indication that Congress purposely did not intend to expand the ACA rules to disability insurance claims. The proposed regulation was based on the DOL's false premise that there was a problem with the disability claims procedure under the Employee Retirement Income

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<sup>1</sup> 82 Fed. Reg. 47409 (October 12, 2017).

<sup>2</sup> [https://www.uschamber.com/sites/default/files/10-27-17\\_di\\_claims\\_comments\\_2017.pdf](https://www.uschamber.com/sites/default/files/10-27-17_di_claims_comments_2017.pdf).

<sup>3</sup> 81 Fed. Reg. 92316 (December 19, 2016).

Security Act of 1974.<sup>4</sup> The docket for the proposed rule that was published in 2015 contains 288 substantive comments, many providing information about the administrative costs and other considerations that the regulators appear to have ignored. We urge the Department to thoroughly review those comments before allowing the final rule to be implemented. Despite this significant opposition, the DOL finalized the rule at the end of 2016 with a January 1, 2018, effective date.<sup>5</sup> Moreover, by the DOL's own admission, there was minimal economic analysis or reasoning offered for these substantial changes.<sup>6</sup>

The Chamber appreciates the extension of the effective date by 90 days. As we mentioned in our comments submitted October 27, 2017, we believe a further delay is warranted to ensure that the rule does not create negative unintended consequences. Nonetheless, the extension provides a first step to addressing the many concerns with the Final Rule.

### **Positive Impact of Private Disability Insurance**

Families with disability insurance have the financial security to better cope with an inability to work due to illness or injury. Additionally, private disability insurers intervene early and focus on working with employers, employees, and treating physicians to maximize the chance of someone staying at work with an accommodation, or returning to work as soon as they are able to do so. Unfortunately, there are still a significant number of people who do not have insurance protection to provide for themselves or their families should a life-changing event occur. According to the Social Security Administration, 69% of private sector workers do not have long-term disability insurance.<sup>7</sup> This is particularly troubling since it is projected that about 1 in 4 of today's 20 year-olds will become disabled before they reach the age of 67.<sup>8</sup>

The consequences of not being able to work can be economically devastating, and they are exacerbated if a worker does not have disability insurance. According to a recent survey, 77% of workers said that missing work for three months due to injury or illness would create a moderate or great financial hardship.<sup>9</sup> For workers that became disabled and unable to work, 44% said they would not have been able to afford to stay in their home without disability insurance, and 33% would have had to apply for government food programs.<sup>10</sup>

Moreover, there are public policy benefits when workers are covered by private disability insurance. Because of the continued income stream, workers are less likely to require government poverty assistance through programs such as the Temporary Assistance for Needy Families and Supplemental Nutritional Assistance programs. Return to work assistance offered

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<sup>4</sup> 80 Fed. Reg. 72014 (November 18, 2015).

<sup>5</sup> 81 Fed. Reg. 92316 (December 19, 2016).

<sup>6</sup> 82 Fed. Reg. 47411, stating that "[t]he RIA acknowledged that the Department did not have sufficient data to quantify the benefits associated with the Final Rule."

<sup>7</sup> Social Security Administration, "Social Security Basic Facts," October 2015, available at <https://www.ssa.gov/news/press/basicfact.html>.

<sup>8</sup> Id.

<sup>9</sup> Consumer Federation of America and Unum, "Employer-Sponsored Disability Insurance: The Beneficiary's Perspective," September 2013, available at [http://forms.unum.com/StreamPDF.aspx?strURL=/FMS\\_122302-2.pdf&strAudience=StreamByNumber](http://forms.unum.com/StreamPDF.aspx?strURL=/FMS_122302-2.pdf&strAudience=StreamByNumber).

<sup>10</sup> Id.

through private disability insurance results in fewer workers entering the Social Security Disability Insurance program.<sup>11</sup> Consequently, having access to disability insurance can be the difference between having economic stability or not, often times ensuring basic necessities such as food and shelter.

### **Chamber Members Believe Increased Costs will Drive Down Participation**

The Chamber questioned several of our plan sponsor members about the increased administrative burdens of the Final Rule. Our members expressed concern that the increased administrative burden imposed by the regulation will have a chilling effect on the ability and willingness of employers to offer employees disability insurance benefits—particularly small businesses. Rather than adding to employers’ regulatory burdens, DOL should recognize that it is in the better interests of employees to encourage expanded access by reducing regulatory burdens.

While most employer sponsored disability insurance benefits offered today are at no cost to the employer, there is also concern that some of the increased costs may be passed to employees as a cost sharing. Economic common sense suggests that raising employee contribution amounts lowers employee take-up rates.<sup>12</sup> Thus, increased regulatory burden may lead to reduced coverage for employees even in businesses where the benefit continues to be offered. Given the importance of private disability insurance, we urge the DOL to reconsider the Final Rule to avoid any decrease in the already tenuous take-up rate of private disability insurance. As part of this reconsideration, we encourage the DOL to conduct a national survey of employers to determine their likely response to the proposed rule in terms of withdrawal of benefits or shifting of costs to employees. The DOL should further delay implementation of the Final Rule until that survey has been completed and its results analyzed.

*There are Few Complaints by Employees about the Claims Process.* The proposed rule was based on the premise that there is a problem and employees complain about the disability claims process, but the DOL has not presented credible empirical evidence to support this claim. In fact, our review of the public comments submitted in response to the proposed rule in 2015 found no evidence of widespread problems or complaints. In addition, the members we questioned stated that they were not aware of any complaints by employees about the disability claims process. This rulemaking looks like a regulator’s solution in search of a problem. Even if

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<sup>11</sup> In its July 2015 annual report, the Social Security and Medicare trustees projected that the Social Security Disability Insurance program was going to be exhausted in 2016, at which point beneficiaries would experience an immediate across-the-board reduction in benefits of about 20 percent. 2015 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, July 2015, <https://www.ssa.gov/oact/tr/2015/tr2015.pdf>. However, in November 2015, legislation was signed into law ensuring the payment of full Social Security disability benefits into 2022. Bipartisan Budget Act of 2015, P.L. 114-74; see also Social Security Administration, Legislative Bulletin 114-8, November 2015, [https://www.ssa.gov/legislation/legis\\_bulletin\\_110315.html](https://www.ssa.gov/legislation/legis_bulletin_110315.html). While Congress was able to avert the imminent depletion of the Social Security disability insurance program, the Chamber believes educating workers about the benefits of private disability insurance can reduce future budget strains on the federal program.

<sup>12</sup> We recommend that the DOL ask the Bureau of Labor Statistics (BLS) to tabulate this data. We attempted to pull data points from public information but the specific cross-tabulation needed is not available through the public on-line access. However, the BLS Employee Benefits Survey office indicates that such a tabulation is feasible from their non-public survey response files.

there were some evidence of problems, before imposing the contemplated regulation, the DOL should have considered the adverse consequences on access and take-up for employees who will benefit from disability insurance coverage.

***Increases in Costs Could Discourage Employers from Offering Disability Insurance.***

Most of the employers polled and the public comments in the regulatory docket reviewed by the Chamber noted that an increase in costs due to litigation risks or additional resources required would negatively impact their decision to continue to offer disability insurance. Indeed, one employer volunteered that administrative costs were an even greater concern than litigation risks. Given the lack of benefit of the Final Rule as noted above, the risk of driving more employers out of the system is completely unnecessary and against sound public policy. If the rule is not addressing an actual problem, then there is no benefit to the rule, and in reality it may be making matters worse.

***The Impact on Small Employers Needs More Study.*** The variation in access to benefits by firm size suggests the importance of considering the impact of the regulation on small businesses—even small increases in the paperwork and procedural burdens for small businesses may further drive down the availability of disability insurance in small businesses. The disparity between access to employer sponsored disability insurance for employees of smaller companies compared to larger ones is noteworthy. The administrative burden of the new regulation will further discourage small businesses from beginning to offer a disability insurance benefit. This is the opposite of what government policy should seek. We need to encourage more employers to offer disability insurance benefits, and small businesses are key to that objective.

**Conclusion**

Thank you for your consideration of these comments. Given the time constraints, we have been able to get only preliminary input from plan sponsors. However, we believe that further input from plan sponsors is critical to ensuring that they continue to offer private disability insurance and encourage the DOL to take more time to study the costs and benefits (if any) of this Final Rule. We are ready to assist in this effort and look forward to working with you to create a rule that supports and expands the private disability insurance system.

Sincerely,



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