



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

March 4, 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madame Speaker:

The Office of Personnel Management (OPM) is submitting the enclosed legislative proposal entitled the "Federal Employees Short-term Disability Security Act of 2008." We request that it be referred to the appropriate committee for prompt and favorable consideration.

This proposal would provide Federal agencies with an additional benefit that we believe better meets the needs of employees in the 21st century. It provides for a short-term disability insurance (STDI) program available for all employees to join on a voluntary basis. A primary goal for offering this new voluntary benefit program is to ensure there is an opportunity for employees, particularly new employees, to obtain additional income protection for recovery from accidents or illnesses or for maternity purposes. We believe this new program will make Federal employment an even more attractive option for new recruits.

The STDI program would safeguard Federal employees during their temporary inability to perform normal occupational duties because of a non-work related disability. There is no Government contribution toward premiums under this proposal. However, employees would be eligible to purchase short-term disability insurance coverage with premiums based on group coverage which will help to keep the premiums affordable.

Currently, Federal employees are not covered by short-term disability insurance. This proposal would ensure employees have the opportunity to obtain insurance which will provide partial income replacement during their temporary time away from work. This coverage would be especially beneficial to new employees who have not had sufficient time in service to accrue a bank of leave. The proposal also leverages the size of the Federal population which would benefit employees who choose to purchase short-term disability insurance coverage at group rates.

In summary, we believe this proposal will make the Federal Government more competitive in the employment marketplace by allowing employees the opportunity to enhance their financial protections whether due to planned maternity or due to unexpected illness or injury.

The Honorable Nancy Pelosi

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The Office of Management and Budget advises that there is no objection to the submission of this proposal from the standpoint of the President's program.

A similar letter is being sent to the President of the Senate.

Sincerely,



Linda M. Springer
Director

Enclosures

A BILL

To provide for a voluntary short-term disability insurance program for Federal employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Employees Short-term Disability Security Act of 2008”.

SEC. 2. PURPOSE.

The purpose of this Act is to provide income protection against short-term disabilities for Federal employees by granting the Director of the Office of Personnel Management authority to offer voluntary short-term disability insurance.

SEC. 3. SHORT-TERM DISABILITY INSURANCE.

(a) Title 5, United States Code, is amended by adding after chapter 87 the following new chapter:

“CHAPTER 88—SHORT-TERM DISABILITY INSURANCE

“Sec.

“8801. Definitions.

“8802. Availability of insurance.

“8803. Contracting authority.

“8804. Financing.

“8805. Extended coverage.

“8806. Preemption.

“8807. Studies, reports, and audits.

“8808. Jurisdiction of courts.

“8809. Administrative functions.

“8810. Cost accounting standards.

“§8801. Definitions

“For purposes of this chapter—

“(1) the term ‘Director’ means the Director of the Office of Personnel Management;

“(2) the term ‘employee’ means an individual who is an employee as defined by section 8901(1), but does not include an individual employed by the government of the District of Columbia.

“(3) the term ‘carrier’ means an insurance company that is licensed to issue disability insurance in all States, taking into account any subsidiaries or affiliates of such a company; and

“(4) the term ‘State’ includes the several States and the District of Columbia.

“§8802. Availability of insurance

“(a) The Director of the Office of Personnel Management shall establish and administer a program to make available short-term disability insurance coverage under this chapter for a disability not covered under chapter 81.

“(b) Short-term disability insurance shall be offered under this chapter as basic coverage and extended coverage, which may be obtained by each employee, at the expense of that individual.

“(c) In addition to the requirements otherwise applicable under section 8801(3), a short-term disability insurance contract under this chapter must be fully insured, whether through reinsurance with other carriers, or otherwise.

“§8803. Contracting authority

“(a) The Director shall, without regard to section 5 of title 41 or any other statute requiring competitive bidding, contract with one carrier for a policy or policies of short-

term disability insurance. The Director shall ensure that the resulting contract (hereafter in this chapter referred to as the ‘master contract’) is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b)(1) The master contract under this chapter shall contain—

“(A) a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits);

“(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

“(C) the terms of the enrollment period; and

“(D) such other terms and conditions as may be determined by the Director, consistent with the requirements of this chapter.

“(2) Premiums charged under the master contract entered into under this section shall reasonably and equitably reflect the cost of the benefits provided, as determined by the Director.

“(c)(1) The master contract under this chapter shall require the carrier to agree—

“(A) to provide payments or benefits to an employee if such employee is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to resolve such disputes expeditiously; and

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for one or more alternative means of dispute

resolution involving independent third-party review under appropriate circumstances acceptable to the Director.

“(2) The carrier's determination as to whether or not a particular employee is eligible to obtain short-term disability insurance coverage under this chapter shall be subject to review to the extent and in the manner provided in the applicable master contract.

“(3) Nothing in this chapter shall be considered to grant authority for the third-party reviewer to change the terms of any contract under this chapter.

“(d)(1) The master contract under this chapter shall be for a term of 7 years, unless terminated earlier by the Director in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled employee, the insurer, and the Director under such contract shall continue with respect to such employee until the termination of coverage of the enrolled employee or the effective date of a successor contract.

“(2) The master contract may be automatically renewable, for a term of 1 year each January first, unless written notice of non-renewal is given either by the Director or the carrier not less than 180 calendar days before the renewal date, or unless modified by mutual agreement.

“(3) The master contract under this chapter shall include such provisions as may be necessary to ensure that, once an employee becomes duly enrolled, short-term disability insurance coverage pursuant to that enrollment shall be terminated only if the individual is separated from Federal service, or, where appropriate, for non-payment of premiums.

“§8804. Financing

“(a) In General.--Each eligible individual obtaining short-term disability insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

“(b) The amount necessary to pay the premiums for enrollment shall be withheld from the pay of such an enrolled individual.

“(c) The carrier participating under this chapter shall maintain records that permit it to account for all amounts received under this chapter (including investment earnings on those amounts) separate and apart from all other funds.

“(d)(1)(A) The Employees' Life Insurance Fund is available, without fiscal year limitation, for reasonable expenses incurred in administering this chapter before the start of the 7-year period described in section 8803(d)(1), including reasonable implementation costs.

“(B) Such Fund shall be reimbursed, before the end of the first year of that 7-year period, for all amounts obligated or expended under subparagraph (A) (including lost investment income). Such reimbursement shall be made by the carrier, in accordance with appropriate provisions which shall be included in the master contract under this chapter.

“(C)(i) There is hereby established in the Employees' Life Insurance Fund a Short-Term Disability Insurance Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the 7-year period described in section 8803(d)(1).

“(ii) The master contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions

to the Short-Term Disability Insurance Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year (adjusted to reconcile for any earlier overestimates or underestimates under this subparagraph) are defrayed.

“(e) Nothing in this chapter shall, in the case of an enrolled individual applying for an extension of short-term disability insurance coverage after the expiration of such enrolled individual’s first opportunity to enroll, preclude the application of underwriting standards for later enrollment.

“§8805. Extended coverage

“(a) Under the conditions, directives, and terms specified in this chapter, the Director may require the carrier to offer each individual enrolled in basic coverage an extension of coverage.

“(b) Each eligible enrolled individual obtaining extended coverage under this chapter shall be responsible for 100 percent of the premiums for any extended coverage.

“§8806. Preemption

“(a) The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State, territorial, tribal, or local law, or any regulation issued thereunder, which relates to short-term disability insurance or contracts.

“(b)(1) No tax, fee, or other monetary payment may be imposed or collected, directly or indirectly, by any State, territory, tribe, or locality, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid for an insurance policy under this chapter.

“(2) Paragraph (1) shall not be construed to exempt any company or other entity issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such entity from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

“(c) No law of a State, territory, tribe, or locality, pertaining to subrogation or reimbursement, with respect to benefits provided under this chapter, shall operate except as expressly adopted by the Director.

“§8807. Studies, reports, and audits

“(a) The master contract under this chapter shall contain provisions requiring the carrier to furnish such reasonable reports as the Director determines to be necessary to enable the Director to carry out the Director’s functions under this chapter.

“(b) Each Federal agency shall keep such records, make such certifications, and furnish the Director, the carrier, or both, with such information and reports as the Director may require.

“(c) The Director shall conduct periodic reviews of each plan under this chapter to ensure its competitiveness.

“§8808. Jurisdiction of courts

“The district courts of the United States have original jurisdiction of a civil action or claim based on an alleged violation of paragraph (1) or (2) of section 8803(c), after such administrative remedies as required under such paragraph (1) or (2) (as applicable) have been exhausted, but only to the extent judicial review is not precluded by any dispute

resolution or other remedy under this chapter. There is hereby created exclusive Federal court jurisdiction over any civil actions or claims arising under this chapter.

“§8809. Administrative functions

“(a)(1) Except as otherwise provided in this chapter, the Director shall prescribe regulations necessary to carry out this chapter and to make arrangements as necessary with other agencies and payroll systems to implement the program.

“(2) Notwithstanding the provisions of section 8801(2), the Director may provide for the participation of any individual who does not meet the definition of ‘employee’ in that section but meets the definition of ‘employee’ for a benefit program for Federal employees designated by the Director,

“(3) Except as otherwise provided by law, the Director shall specify in regulation the treatment of time spent by an individual in receipt of benefits under this chapter for the purposes of periodic increases in pay, retention purposes, and other rights, benefits, and conditions of employment for which length of service is a factor.

“(b) The carrier shall provide for periodic coordinated enrollment, promotion, and education efforts, as specified by the Director.

“§8810. Cost accounting standards

“The cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) shall not apply with respect to a short-term disability insurance contract under this chapter.”.

(b) The analysis for part III of title 5, United States Code, is amended by adding at the end of subpart G the following:

“88. Short Term Disability Insurance.....8801.”.

SEC. 4. EFFECTIVE DATE; APPLICATION

The amendments made by section 3 of this Act shall take effect on the date of enactment of this Act and shall apply to any contract that takes effect with respect to the first calendar year that begins more than 18 months after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

“To provide for a voluntary short-term disability insurance program for Federal employees.”

The first section of the draft bill titles the bill as the “The Federal Employees Short-term Disability Security Act of 2008.”

Section 2 sets forth the purpose of the draft bill, which is to provide income protection against short-term disabilities for Federal employees by granting the Director of the Office of Personnel Management authority to offer voluntary short-term disability insurance.

Section 3 of the draft bill, in subsection (a), would amend title 5, United States Code, by inserting a new chapter 88 which establishes a short-term disability insurance program. Chapter 88 consists of 10 sections.

New *section 8801 of title 5, U.S. Code*, defines terms used in the new chapter. Covered employees are defined as those who meet the definition of “employee” for purposes of the Federal Employees Health Benefits (FEHB) Program under 5 U.S.C. 8901(1) and are not employees of the government of the District of Columbia. The Director of the Office of Personnel Management would have authority elsewhere in chapter 88 to extend coverage to groups of employees who otherwise would be excluded.

The carrier with which the Director of the Office of Personnel Management would contract for short-term disability insurance would have to be an insurance company that is licensed, or has subsidiaries that are licensed, to issue disability insurance in all 50 States and the District of Columbia.

New *section 8802 of title 5* contains the basic provisions concerning the establishment of the short-term disability insurance program.

Subsection (a) of section 8802 requires the Director of the Office of Personnel Management to establish and administer a short-term disability insurance program for covered employees during their temporary inability to perform normal occupational duties because of a disability not covered under chapter 81 of title 5, governing the workers’ compensation program for Federal employees.

Subsection (b) of section 8802 provides that the short-term disability insurance program consists of, at a minimum, basic insurance and extended coverage, which covered employees could obtain at their own expense.

Subsection (c) of section 8802 requires the contract under which insurance is provided under chapter 88 to be fully insured, either through reinsurance with other carriers, or through some other means.

New *section 8803 of title 5* sets forth the Director's contracting authority with respect to the short-term disability insurance program.

Subsection (a) of section 8803 requires the Director to contract with one carrier for one or more short-term disability insurance policies. This contract is referred to as the master contract. The subsection exempts the Director from statutes requiring competitive bidding, but requires the Director to ensure that the contract is awarded based on the contractor's qualifications, price, and reasonable competition.

Subsection (b) of section 8803 sets forth certain requirements regarding the master contract.

Paragraph (1) of subsection (b) requires the master contract to contain a detailed statement of the benefits offered, the premiums charged, the terms of the enrollment period, and any other terms and conditions the Director determines are appropriate, provided they are consistent with the requirements of chapter 88. The statement of benefits must include any maximums or other limitations and any exclusions. The statement of premiums must include any limitations or conditions affecting their subsequent adjustment.

Paragraph (2) of subsection (b) requires premiums under the master contract to reasonably and equitably reflect the cost of the benefits, as determined by the Director.

Subsection (c) of section 8803 includes certain requirements relating to the carrier, as well as provisions pertaining to dispute resolution.

Paragraph (1) of subsection (c) sets certain requirements for the master contract. The contract must require the carrier to agree to provide payments or benefits to an employee who is entitled to them under the terms of the contract. The contract also must require the carrier to agree to establish internal procedures for resolving disputed claims expeditiously. Moreover, the carrier must agree to establish, for disputes not resolved through those procedures, alternative dispute resolution procedures incorporating independent third-party review under circumstances the Director finds acceptable.

Paragraph (2) of subsection (c) provides for review of the carrier's determination regarding an employee's eligibility for short-term disability insurance coverage, to the extent and in the manner provided in the master contract.

Paragraph (3) of subsection (c) makes clear that no third-party reviewer may change the terms of any contract under chapter 88.

Subsection (d) of section 8803 pertains to the master contract.

Paragraph (1) of subsection (d) provides that the term of the master contract is to be 7 years, unless the Director terminates it earlier, consistent with the terms of the contract. The rights and responsibilities of an enrolled employee, the insurer, and the Director under the contract remain unchanged until the employee's coverage terminates or a successor contract takes effect.

Paragraph (2) of subsection (d) provides for automatic renewal of the master contract for 1 year, beginning each January 1, unless either the Director or the carrier gives written notice of non-renewal at least 180 calendar days before the renewal date, or unless the carrier and the Director agree to modify the master contract.

Paragraph (3) of subsection (d) requires the master contract to include whatever provisions are needed to ensure that the short-term disability insurance coverage of an employee who is properly enrolled will be terminated only as a result of the employee's separation from Federal service or if required premiums are no longer being paid.

New *section 8804 of title 5* deals with financing of the program.

Subsection (a) provides that the individual will pay 100 percent of the cost of short-term disability insurance coverage offered under this chapter.

Subsection (b) of section 8804 provides that the amount of the premium for extended coverage is withheld from the individual's pay.

Subsection (c) of section 8804 requires the carrier to maintain records enabling it to account for all amounts received relating to the program, including investment earnings on those amounts, and to keep those records separate from records pertaining to all other funds.

Subsection (d) of section 8804 concerns the source of funding for the program.

Paragraph (1) of subsection (d) makes available the Employees' Life Insurance Fund for reasonable start-up costs related to administration of the short-term disability insurance program before the master contract takes effect. Paragraph (1) also requires the Fund to be reimbursed, before the end of the first year the master contract is in effect, for all amounts expended to cover such start-up costs, including lost investment income. The master contract must include provisions to address this reimbursement obligation. Subsequent costs will be paid from a short-term disability administrative account fund established in the Employee's Life Insurance Fund. The master contract shall include provisions requiring the carrier to contribute to this administrative fund as necessary.

Subsection (e) of section 8804 makes clear that the provisions of chapter 88 do not preclude underwriting standards from being applied for later enrollment in the case of an employee who elects extended coverage after his or her first opportunity to enroll in such coverage has expired.

New *section 8805 of title 5* pertains to extended coverage.

Subsection (a) of section 8805 authorizes the Director of the Office of Personnel Management to require the carrier to offer employees enrolled in basic insurance extended insurance coverage.

Subsection (b) of section 8805 specifies that those electing basic or extended coverage must pay the full cost of such coverage.

New *section 8806 of title 5* deals with preemption of State and local laws and regulations.

Subsection (a) of section 8806 provides that State and local laws concerning short-term disability insurance or contracts, and related regulations, are preempted by the terms of any contract under chapter 88 relating to the nature, provision, or extent of coverage or benefits.

Subsection (b) of section 8806 bars any State, territory, tribe, or locality, or by any political subdivision or other governmental authority of these entities from imposing any tax or fee on any premium paid for an insurance policy under chapter 88. However, this does not mean that a company or other entity issuing an insurance policy under chapter 88 is exempt from the imposition, payment, or collection of a tax, fee, or other payment on the net income or profit they realize from business conducted under chapter 88, if that tax, fee, or payment applies to a broad range of business activity.

Subsection (c) of section 8806 provides that any State, territory, tribe or locality laws concerning subrogation or reimbursement will have no effect on short-term disability insurance benefits provided under chapter 88, except as expressly determined by the Director of the Office of Personnel Management.

New *section 8807 of title 5* contains requirements relating to studies, reports, and audits.

Subsection (a) of section 8807 requires the master contract to require the carrier to provide reports the Director determines are needed to enable the Director to perform his or her functions under chapter 88.

Subsection (b) of section 8807 requires Federal agencies to keep whatever records and make whatever certifications the Director requires and to provide the Director, the carrier, or both with whatever information and reports the Director requires.

Subsection (c) of section 8807 requires the Director to review each plan under chapter 88 periodically to ensure its competitiveness.

New *section 8808 of title 5* states that the U.S. district courts have original jurisdiction of a civil action or claim under chapter 88, after the administrative remedies required by 5 U.S.C. 8803(c)(1) or (2), as applicable, have been exhausted. However, the courts do not have jurisdiction if judicial review is precluded by a dispute resolution or other remedy

provided by chapter 88. Federal courts have exclusive jurisdiction over civil actions and claims arising under chapter 88.

New *section 8809 of title 5* concerns administrative functions.

Subsection (a) of section 8809 deals with regulatory authority.

Paragraph (1) of subsection (a) requires the Director of the Office of Personnel Management to prescribe regulations needed to carry out chapter 88 and to make necessary arrangements with other agencies and payroll systems to implement the short-term disability insurance program.

Paragraph (2) of subsection (a) permits the Director to provide for the participation in the short-term disability insurance program of any individual who otherwise would be excluded from the program because they do not meet the definition of “employee” in new section 8801(2), as long as the individual meets the definition of “employee” for a benefit program for Federal employees designated by the Director.

Paragraph (3) of subsection (a) requires the Director to prescribe by regulation how time spent in receipt of short-term disability insurance benefits under chapter 88 will be treated for purposes of periodic increases in pay, such as within-grade pay increases, retention, and other rights, benefits, and conditions of employment for which length of service is a factor. Such regulations would address these matters only to the extent they are not addressed explicitly in statute.

Subsection (b) of section 8809 requires the carrier to provide for periodic coordinated enrollment, promotion, and educational efforts specified by the Director, relating to the short-term disability insurance program.

New *section 8810 of title 5* provides that any short-term disability insurance contract under chapter 88 is not subject to the cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)).

Section 4 of the draft bill would provide the effective date and the application of the legislation. The amendments made by section 3 of the Act would take effect on the date of enactment of the Act, and any contract implementing this Act would begin more than 18 months after that date.