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COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2101 RAYBURN HOUSE OFFICE BUILDING
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April 15, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Acting Secretary Su and Assistant Secretary Gomez:

We write to draw your attention to the December 2023 report of the Advisory Council on Employee Welfare and Pension Benefit Plans ("ERISA Advisory Council") regarding *Long-Term Disability Benefits and Mental Health Disparity*.¹ In this report, the ERISA Advisory Council provides an assessment of access to disability benefits and the barriers imposed upon workers experiencing mental health and substance use disorder conditions. We encourage the Department of Labor (Department) to closely examine the recommendations of the ERISA Advisory Council to improve access to benefits and eliminate disparities that arise from discriminatory treatment of behavioral health.

As you know, disability insurance is a critical employee benefit that provides financial protection for individuals who become unable to work due to a disability or illness. Many employers offer long-term disability (LTD) benefits, a form of income replacement that provides about 50 to 70 percent of an individual's pre-disability earnings for a period of years or until the individual reaches a certain age.² Although only a minority of all workers—about 35 percent of private sector workers—have access to LTD benefits through their employer, LTD benefits nonetheless are vital to millions of Americans who continue to be unable to work following the conclusion of their eligibility for short-term disability

¹ ERISA Advisory Council, *Report to the Honorable Julie A. Su, United States Acting Secretary of Labor: Long-Term Disability Benefits and Mental Health Parity*, U.S. Dep't of Labor (Dec. 2023), <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2023-long-term-disability-benefits-and-mental-health-disparity.pdf>.

² New York Life, *What is Disability Insurance?*, <https://www.newyorklife.com/articles/what-is-disability-insurance> (last visited Apr. 3, 2024). See e.g., *Long-Term Disability Insurance Program*, U.S. Dep't of Dis. Serv., <https://dds.dc.gov/page/long-term-disability-insurance-program> (last visited Mar. 25, 2024).

benefits.³ As employee benefit plans,⁴ job-based LTD benefits are regulated by the Department and are subject to the legislative and oversight jurisdiction of the Committee on Education and the Workforce.⁵

As the ERISA Advisory Council notes in its report, the vast majority of LTD plans treat disability arising from behavioral health conditions differently than disability arising from physical health conditions.⁶ Regrettably, virtually all LTD plans—about 99 percent—offer a shorter coverage period for mental health and substance use disorder conditions compared to other medical conditions, making it more difficult for individuals to receive needed benefits, even when they are unable to work due to their health condition.⁷ These duration limits, which often restrict workers to just 24 months of benefits, are a discriminatory feature that have been widespread since at least the 1960s⁸ despite inadequate justification for their continued existence.⁹ Some jurisdictions, such as Vermont and Canada, have eliminated duration limitations,¹⁰ and a leading disability insurance provider recently endorsed eliminating these and other limitations.¹¹

Discriminatory treatment of behavioral health conditions in LTD benefits is inconsistent with certain principles established in law, such as in the *Mental Health Parity and Addiction Equity Act* (MHPAEA).¹² However, while MHPAEA requires group health plans and insurers to cover behavioral health benefits at parity with medical and surgical benefits, this requirement does not apply to LTD plans.¹³ Moreover, in addition to denying workers needed income replacement during periods of disability, the disparate treatment of mental health and substance use disorders reinforces harmful stereotypes that continue to stigmatize individuals with behavioral health conditions.¹⁴

The thorough assessment of this issue by the ERISA Advisory Council presents an opportunity to consider reforms, and we encourage the Department to give full consideration to the report's analysis and to the recommendations it contains. Should the Department find that additional resources or authority requires congressional action to ensure meaningful parity in LTD benefits, we request that the Department include an explanation of these needs in its response to this letter.

³ News Release, U.S. Dep't of Labor, Employee Benefits in the United States – March 2023 (Sept. 21, 2023), <https://www.bls.gov/news.release/pdf/ebs2.pdf>.

⁴ 29 U.S.C. § 1003(3).

⁵ Pursuant to House Rule X(1)(e), the jurisdiction of the Committee on Education and the Workforce includes matters involving: “labor generally,” “wages and hours of labor,” and the “[o]rganization, administration, and general management of the Department of Labor.” This includes jurisdiction over the provision of employee benefits and their regulation by the Department of Labor, including exclusive jurisdiction over Title I and Title IV of ERISA.

⁶ ERISA Advisory Council, *supra* note 1 at 11.

⁷ ERISA Advisory Council *Transcript of Proceedings* (Dec. 12, 2023) at 71.

⁸ *Id.* at 66.

⁹ ERISA Advisory Council *Transcript of Proceedings* (Oct. 30, 2023) at 9.

¹⁰ ERISA Advisory Council, *supra* note 1 at 17 (Vermont) and 19 (Canada).

¹¹ Sun Life, *Sun Life U.S. calls for mental health parity in disability insurance* (Dec. 12, 2023), <https://www.sunlife.com/en/newsroom/news-releases/announcement/sun-life-us-calls-for-mental-health-parity-in-disability-insurance/123816/>.

¹² Pub. L. No. 110–343 div. C, title V, subtitle B (2008).

¹³ ERISA Advisory Council, *supra* note 1 at 4.

¹⁴ *Id.* at 42.

The Honorable Julie A. Su
The Honorable Lisa M. Gomez
April 15, 2024
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Thank you for your continued work to protect the hard-earned benefits of workers and their families.
We look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member



MARK DeSAULNIER
Ranking Member
Subcommittee on Health, Employment, Labor, and
Pensions