

111TH CONGRESS
2D SESSION

H. R. 6368

To provide for a voluntary, non-work related disability insurance program
for Federal employees.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Ms. NORTON introduced the following bill; which was referred to the
Committee on Oversight and Government Reform

A BILL

To provide for a voluntary, non-work related disability
insurance program for Federal employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employee Dis-
5 ability Insurance Act of 2010”.

6 **SEC. 2. NON-WORK RELATED DISABILITY INSURANCE.**

7 (a) Title 5, United States Code, is amended by add-
8 ing after chapter 87 the following:

1 **“CHAPTER 88—NON-WORK RELATED**
 2 **DISABILITY INSURANCE**

“Sec.

“8801. Definitions.

“8802. Availability of insurance.

“8803. Contracting authority.

“8804. Benefits.

“8805. Premiums.

“8806. Preemption.

“8807. Studies, reports, and audits.

“8808. Jurisdiction of courts.

“8809. Administrative functions.

“8810. Cost accounting standards.

3 **“§ 8801. Definitions**

4 “For purposes of this chapter—

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

7 “(2) the term ‘employee’ has the meaning given
 8 such term in section 8901(1);

9 “(3) the term ‘carrier’ means a voluntary asso-
 10 ciation, corporation, partnership, or other non-
 11 governmental organization which is lawfully engaged
 12 in providing, paying for, or reimbursing lost wages
 13 or salaries under group insurance policies or con-
 14 tracts, membership or subscription contracts, or
 15 similar group arrangements, in consideration of pre-
 16 miums or other periodic charges payable to the car-
 17 rier, including an insurance plan duly sponsored or
 18 underwritten by an employee organization and an
 19 association of organizations or other entities de-

1 scribed in this paragraph sponsoring a temporary
2 benefits plan;

3 “(4) the term ‘injury’ includes an injury related
4 to pregnancy and childbirth;

5 “(5) the term ‘sickness’ includes a sickness re-
6 lated to pregnancy and childbirth;

7 “(6) the term ‘State’ includes the District of
8 Columbia; and

9 “(7) the term ‘totally disabled’, used with re-
10 spect to an employee, means such employee is unable
11 to perform the essential functions of such employee’s
12 position.

13 **“§ 8802. Availability of insurance**

14 “(a) The Director shall establish and administer a
15 program to make available insurance coverage under this
16 chapter for an injury occurring outside the workplace or
17 other disability otherwise not covered under chapter 81.

18 “(b) Insurance shall not be available under this chap-
19 ter if the injury of an employee is caused by such employ-
20 ee’s intention to bring about the injury to himself or to
21 another individual.

22 “(c) In addition to the requirements otherwise appli-
23 cable under section 8801(3), an insurance contract under
24 this chapter must be fully insured, whether through rein-
25 surance with other carriers or otherwise.

1 **“§ 8803. Contracting authority**

2 “(a) The Director shall, without regard to section 5
3 of title 41 or any other statute requiring competitive bid-
4 ding, contract with one or more carriers for a policy or
5 policies of disability insurance as described under this
6 chapter. The Director shall ensure that each resulting con-
7 tract is awarded on the basis of contractor qualifications,
8 price, and reasonable competition.

9 “(b)(1) Each contract under this section shall con-
10 tain—

11 “(A) a detailed statement of the benefits of-
12 fered (including any maximums, limitations, exclu-
13 sions, and other definitions of benefits);

14 “(B) the premiums charged (including any limi-
15 tations or other conditions on their subsequent ad-
16 justment);

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

18 “(D) such other terms and conditions (includ-
19 ing procedures for establishing eligibility for insur-
20 ance under this chapter) as may be determined by
21 the Director, consistent with the requirements of
22 this chapter.

23 “(2) Premiums charged under a contract under this
24 section shall reasonably and equitably reflect the cost of
25 the benefits provided, as determined by the Director.

1 “(c)(1) Each contract under this section shall require
2 the carrier—

3 “(A) to provide payments or benefits described
4 in subsection (c) or (d) of section 8804 to an em-
5 ployee if such employee is entitled thereto under the
6 terms of the contract; and

7 “(B) with respect to disputes regarding claims
8 for payments or benefits under the terms of the con-
9 tract—

10 “(i) to establish internal procedures de-
11 signed to resolve such disputes expeditiously;
12 and

13 “(ii) to establish for disputes not resolved
14 through procedures under clause (i), procedures
15 for one or more alternative means of dispute
16 resolution involving independent third-party re-
17 view under circumstances acceptable to the Di-
18 rector.

19 “(2) The carrier’s determination as to whether or not
20 a particular employee is eligible to obtain insurance cov-
21 erage under this chapter shall be subject to review to the
22 extent and in the manner provided in the applicable mas-
23 ter contract.

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

4 “(d)(1) Each contract under this section shall be for
5 a term of 7 years, unless terminated earlier by the Direc-
6 tor in accordance with the terms of such contract. How-
7 ever, the rights and responsibilities of the enrolled em-
8 ployee, the insurer, and the Director under each contract
9 shall continue with respect to such employee until the ter-
10 mination of coverage of the enrolled employee or the effec-
11 tive date of a successor contract.

12 “(2) A 7-year contract described in paragraph (1)
13 may be made automatically renewable, for a term of 1 year
14 each January first, unless written notice of non-renewal
15 is given either by the Director or the carrier not less than
16 180 calendar days before the renewal date, or unless modi-
17 fied by mutual agreement.

18 “(3) A 7-year contract described in paragraph (1)
19 shall include such provisions as may be necessary to en-
20 sure that, once an employee becomes duly enrolled, insur-
21 ance coverage pursuant to that enrollment shall be termi-
22 nated only if the individual is separated from Federal serv-
23 ice or, where appropriate, for non-payment of premiums.

1 **“§ 8804. Benefits**

2 “(a) The Director may prescribe reasonable minimum
3 standards for benefit plans offered under this chapter. The
4 benefits under this chapter shall provide for benefits as
5 described in subsections (c) and (d).

6 “(b)(1) Benefits under this chapter may supplement
7 other benefits of an employee, including worker’s com-
8 pensation and disability retirement income.

9 “(2) A contract providing benefits under this chapter
10 shall not provide for a preexisting condition exclusion.

11 “(c)(1) An eligible employee may receive benefits
12 under this chapter during the first 12 months that an em-
13 ployee qualifies for such benefits. An employee shall re-
14 ceive such benefits after the expiration of the waiting pe-
15 riod selected by such employee under paragraph (2)(A).
16 The amount of benefits shall be the lesser of—

17 “(A) 70 percent of the monthly pay, excluding
18 bonuses, of an employee at the time of the injury or
19 sickness of such employee occurs; or

20 “(B) 70 percent of the maximum rate of basic
21 pay provided for grade GS–15 of the general sched-
22 ule.

23 “(2)(A) The period for which benefits are payable to
24 an employee under this subsection will begin after the
25 completion of a waiting period. An employee shall elect
26 one of the following waiting period options:

1 “(i) On the 8th day of continuous disability.

2 “(ii) On the 31st day of continuous disability.

3 “(iii) On the 91st day of continuous disability.

4 “(iv) On the 181st day of continuous disability.

5 “(B) Employees who elect to receive benefits earlier
6 shall pay a higher premium.

7 “(d)(1) An employee may receive benefits after the
8 12-month period established under subsection (c) has ex-
9 pired only if such employee is totally disabled due to injury
10 or sickness.

11 “(2) The amount of total disability benefits shall be
12 50 percent of an employee’s monthly pay, excluding bo-
13 nuses, at the time of the benefits under subsection (c) have
14 expired. Total disability benefits shall not be available to
15 an employee once such employee reaches the age of 67.

16 “(e) A contract approved under this chapter shall re-
17 quire the carrier to cover the geographic service delivery
18 area specified by the Director. The Director shall require
19 carriers to include non-work related disability underserved
20 areas in their service delivery areas.

21 “(f) A surviving spouse, disability annuitant, or sur-
22 viving child whose annuity is terminated and is later re-
23 stored, may continue enrollment in a disability benefits
24 plan subject to the terms and conditions prescribed in reg-
25 ulations issued by the Office.

1 **“§ 8805. Premiums**

2 “(a) Each eligible individual obtaining insurance cov-
3 erage under this chapter shall be responsible for 100 per-
4 cent of the premiums for such coverage.

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

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

13 “(d)(1)(A) The Employees’ Life Insurance Fund is
14 available, without fiscal year limitation, for reasonable ex-
15 penses incurred in administering this chapter before the
16 start of the first term described in section 8803(d)(1), in-
17 cluding reasonable implementation costs.

18 “(B) Such Fund shall be reimbursed, before the end
19 of the first year of the first 7-year period described in sec-
20 tion 8803(d)(1), for all amounts obligated or expended
21 under subparagraph (A) (including lost investment in-
22 come). Reimbursement under this subparagraph shall be
23 made by the carrier in accordance with applicable provi-
24 sions included in the relevant contract.

25 “(C)(i) There is hereby established in the Employees’
26 Life Insurance Fund a Non-Work Related Disability In-

1 surance Administrative Account, which shall be available
2 to the Office of Personnel Management, without fiscal
3 year limitation, to defray reasonable expenses incurred by
4 the Office in administering this chapter after the start of
5 the first term described in section 8803(d)(1).

6 “(ii) A contract under this chapter shall include ap-
7 propriate provisions under which the carrier involved shall,
8 during each year, make such periodic contributions to the
9 Non-Work Related Disability Insurance Administrative
10 Account as necessary to ensure that the reasonable antici-
11 pated expenses of the Office of Personnel Management in
12 administering this chapter during such year (adjusted to
13 reconcile for any earlier overestimates or underestimates
14 under this subparagraph) are defrayed.

15 “(e) Nothing in this chapter shall, in the case of an
16 enrolled individual applying for an extension of disability
17 insurance coverage under this chapter after the expiration
18 of such enrolled individual’s first opportunity to enroll,
19 preclude the application of underwriting standards for
20 later enrollment.

21 **“§ 8806. Preemption**

22 “(a) The terms of any contract under this chapter
23 which relate to the nature, provision, or extent of coverage
24 or benefits (including payments with respect to benefits)
25 shall supersede and preempt any State, territorial, tribal,

1 or local law, or any regulation issued thereunder, which
2 relates to non-work related disability insurance or con-
3 tracts.

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

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

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

22 **“§ 8807. Studies, reports, and audits**

23 “(a) A contract under this chapter shall contain pro-
24 visions requiring the carrier to furnish such reasonable re-
25 ports as the Director determines to be necessary to enable

1 the Director to carry out the Director's functions under
2 this chapter.

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

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

9 **“§ 8808. Jurisdiction of courts**

10 “The district courts of the United States have origi-
11 nal jurisdiction, concurrent with the United States Court
12 of Federal Claims, of a civil action or claim against the
13 United States under this chapter after such administrative
14 remedies as required under section 8803(c) have been ex-
15 hausted, but only to the extent judicial review is not pre-
16 cluded by any dispute resolution or other remedy under
17 this chapter.

18 **“§ 8809. Administrative functions**

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

24 “(2) Except as otherwise provided by law, the Direc-
25 tor shall specify in regulation the treatment of time spent

1 by an individual in receipt of benefits under this chapter
 2 for the purposes of periodic increases in pay, retention
 3 purposes, and other rights, benefits, and conditions of em-
 4 ployment for which length of service is a factor.

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

8 **“§ 8810. Cost accounting standards**

9 “The cost accounting standards issued pursuant to
 10 section 26(f) of the Office of Federal Procurement Policy
 11 Act (41 U.S.C. 422(f)) shall not apply with respect to an
 12 insurance contract under this chapter.”.

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

“88. Non-Work Related Disability Insurance 8801”.

