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Via Email and facsimile

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EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Re: Federal Long Term Care Insurance Program (74 Fed. Reg. 46937) RIN
Number 3206-AL92

Dear Mr. Cutler,

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, fifty-three affiliates nationwide, and countless additional supporters and activists, we submit these comments on the Office of Personnel Management's ("OPM") proposed changes to the eligibility requirements under the **Federal Long Term Care Insurance Program (74 Fed. Reg. 46937)** and the Absence and Leave; Sick Leave program (74 Fed. Reg. 46934). Our comments focus on the proposed changes that would expand the definition of "family member" to include a "domestic partner," whether of the opposite sex or the same sex.

The ACLU has a long history of vigorously advocating for nondiscriminatory employment policies on behalf of the lesbian, gay, bisexual, and transgender ("LGBT") community. We are at the forefront of efforts, through both impact litigation and legislative and executive branch work, to promote and enforce local, state, and federal laws that treat LGBT employees and their families equally and with respect. Given our commitment to promoting workplace equality and equal access to critical benefits such as insurance and family leave programs, the ACLU strongly applauds the proposed changes expanding coverage to a federal employee's "domestic partner."

We have two comments that we believe will clarify and improve the determination as to whether a relationship meets the definition of "domestic partner." First, it is our understanding that one of the ways that a couple may satisfy the definition of "domestic partners" is by showing that

they have been “granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).” Absent such legal recognition by a governmental authority, which is unavailable to many gay and lesbian couples, it’s our understanding that an employee would need to demonstrate by other means that she and her partner meet the criteria for a domestic partnership under these regulations.

We recommend that the regulations clarify that those couples whose relationships have been granted legal recognition by a state or the District of Columbia as a marriage or analogous relationship would conclusively satisfy the definition of “domestic partners.” The purpose of our recommendation is to eliminate the redundancy of requiring, for example, a same-sex couple who is married under the laws of Iowa to also demonstrate by other means that they are in a committed relationship. We believe that this recommendation would streamline the process of qualifying as domestic partners for many same-sex couples and eliminate an unnecessary burden on those couples as well as on OPM staff charged with administering these programs.

Second, we recommend that the “common residence” requirement in 5 CFR part 875.213 and any other similar regulation regarding the definition of “domestic partner” be amended to make clear that those couples who are temporarily living apart for familial, financial, or professional reasons would not automatically be disqualified as domestic partners. To that end, we propose that the “common residence” requirement be amended as follows, “Have a common residence, and intend to continue the arrangement indefinitely. Notwithstanding, partners who are living temporarily apart for health care, familial, financial, or professional reasons may satisfy this requirement so long as they intend to share a common residence and to continue that arrangement indefinitely.” Given the ever increasing prevalence of two career couples, and the health care, familial, and other demands that may cause a couple to live apart on a temporary basis, we believe that our recommendation would ensure that the OPM regulations not unintentionally exclude otherwise committed couples from qualifying as domestic partners.

Sincerely,



Christopher Anders
Senior Legislative Counsel
Washington Legislative Office



Christine P. Sun
Senior Counsel
Lesbian Gay Bisexual
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