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John C. Bell
(1916-1967)
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January 7, 2011

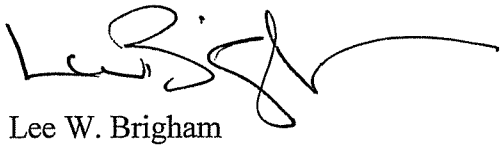
Via Electronic Mail to e-ORI@dol.gov
Honorable Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue, NW, Suite S-2524
Washington, DC 20210-001

Re: ERISA § 408(b)(2) Hearing on Fee Disclosures to Welfare Benefit Plans

Dear Assistant Secretary Borzi:

I submit the enclosed comments for consideration in connection with the Department of Labor's hearing into the above-referenced matter. I appreciate the opportunity to comment on this matter. Please feel free to contact me if you have any questions concerning my comments.

Sincerely,



Lee W. Brigham

LWB/id
Enclosure

COMMENTS

BY

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FOR THE

DEPARTMENT OF LABOR

HEARING ON REASONABLE CONTRACTS OR ARRANGEMENTS

FOR WELFARE BENEFIT PLANS UNDER ERISA § 408(b)(2) --

EMPLOYEE WELFARE BENEFIT PLAN DISCLOSURE

COMMENTS SUBMITTED JANUARY 7, 2011

My name is Lee Brigham. I am a partner with the firm of Bell & Brigham in Augusta, Georgia. A substantial part of my law practice is devoted to the representation of ERISA plan participants and beneficiaries who are injured by fiduciary misconduct. My firm, along with several others, including the National Consumer Law Center, is currently prosecuting several cases relating to the insurance industry's receipt of substantial, undisclosed income in connection with the issuance of life insurance policies to fund employee welfare benefit plans through the use of so-called "retained asset accounts" to retain beneficiaries' benefits and invest the beneficiaries' funds for the insurers' own enrichment.

I write on behalf of my clients and colleagues to advise the Department of Labor about the self-dealing inherent in the insurance industry's use of retained asset accounts and to respond to the assertion by the American Council of Life Insurer ("ACLI") that its members typically receive no indirect compensation in connection with the issuance of life insurance policies to employee welfare benefit plans. As explained below, the truth of the matter is that insurance companies are reaping hundreds of millions of dollars in indirect compensation each year by using retained asset accounts to retain death benefits that the insurers owe to ERISA plan beneficiaries and by investing the beneficiaries' funds for their own enrichment.

This comment addresses three issues. First, the comment discusses retained asset accounts generally, including: what they are, how they work, and the profits they generate for the insurance industry. Second, the comment responds to the ACLI's assertion that its members should not be required to disclose the compensation they receive in connection with the sale of insurance products to welfare benefit plans on the ground that the products allegedly are simple, straightforward products for which the compensation is clear. Last, the comment discusses the application of

ERISA's fiduciary standards and prohibited transaction rules to the insurance industry's use of retained asset accounts to retain and invest benefits due under welfare benefit plans and the fact that the self-dealing inherent therein cannot be cured through disclosure because it is prohibited as a matter of law.

I. Retained Asset Accounts - or Making Money On Other People's Money.

A retained asset account is a method of settling claims for life insurance death benefits that has been devised by the insurance industry in which an empty, nominal "account" is established for the beneficiary at a bank, the beneficiary is issued a book of drafts with which to draw on the proceeds through the account, and the proceeds are retained and invested by the insurer until it is called upon to transfer funds to the bank to cover drafts drawn on the account. The United States Court of the Appeals for the First Circuit has described such accounts as no more than an "IOU" because, until the beneficiary issues a draft drawn on the account, the beneficiary's funds are retained and used by the insurer for its own enrichment. *Mogel v. Unum Life Ins. Co. of America*, 547 F.3d 23, 27 (1st Cir. 2008).

Retained asset accounts have been in use for over a decade, but have not received much attention until recently. The insurance industry's use of such accounts to retain and use beneficiaries' claim proceeds as investment capital was exposed publicly on July 28, 2010, when Bloomberg News published an article entitled, "Fallen Soldiers' Families Denied Cash as Insurers Profit," concerning the experience of a mother who received a retained asset account from the Prudential Insurance Company of America after her son was killed in Afghanistan while serving in the military.[1] The article explained that the mother became suspicious after several retail stores

[1] This article is attached as Exhibit 1 and is available on-line at www.bloomberg.com/news/2010-07-28/fallen-soldiers-families-denied-cash-payout-as-life-insurers-boost-profit.html.

rejected drafts drawn on her "Alliance Account" because the stores could not confirm that there were sufficient funds on deposit to cover the drafts. The article further reported:

- that the mother and other similarly-situated beneficiaries received only 1 percent interest on their Alliance Accounts during 2008 while Prudential earned a 4.8 percent return on its investment of the retained funds;
- that Alliance Accounts and other similar retained asset accounts are not insured by the Federal Deposit Insurance Corporation ("FDIC");
- that insurance companies were paying beneficiaries less than half of the rate of interest that was available at banks where accounts were FDIC-insured up to $250,000;
- that insurance companies were holding $28 billion in retained death benefits;

  and

- that one insurance company, the Metropolitan Life Insurance Company, alone held approximately $10 billion in retained death benefits and makes $100 million to $300 million a year from investment returns on retained death benefits.

A subsequent Bloomberg article entitled, "Forged MetLife 'Checks' Show Retained-Asset Account Risks," detailed additional problems associated with retained asset accounts, including a case in which MetLife refused to cover losses that a beneficiary sustained when a third-party forged several checks drawn on her account, thereby forcing the beneficiary to sue both MetLife and the bank that processed the drafts to recover her losses.[2] *See Williams v. Metropolitan Life Ins. Co.*, 367 F.Supp.2d 844 (E.D.N.C. 2005). The article explained that federal and state law would have required the bank to verify the signatures and to cover the losses if the funds had been deposited at

[2] A copy of this article is attached as Exhibit 2 and is available on-line at www.bloomberg.com/news/2010-08-24/forged-metlife-check-lawsuit-costs-show-risks-of-retained-asset-account.html.

the bank and not retained by MetLife. It further explained that funds retained by an insurance company using a retained asset account might not be covered by state insurance guaranty associations in the event the insurer were to fail.

The issues raised in such articles have prompted investigations into the insurance industry's use of retained asset accounts by the FDIC, the New York Attorney General, federal and state legislators, state insurance commissioners and the National Association of Insurance Commissioners ("NAIC").[3]

II. Insurance Companies Derive Substantial Income from the Sale of Non-Medical Benefits to Welfare Plans and Should Be Required to Disclose Such Income to Plan Sponsors, Participants and Beneficiaries.

Speaking on behalf of the ACLI, Todd Katz, Executive Vice-President of MetLife, opined that ERISA Section 408(b)(2)'s disclosure rules should not apply to the sale of non-medical welfare benefits sold by ACLI's members because "[t]he vast majority of these products are simple 'protection' products, with no investment or other features[,]" and because "in these structurally simple products, *indirect compensation typically is not received by the insurer.*" (Katz Testimony, pp. 2-3; *see also id.* at 7-8 ("[F]or these insurance products, the premium for the insurance coverage is the direct compensation, *there is no indirect compensation....*")(italics added)).[4]

Mr. Katz's assertion that insurance companies receive no indirect compensation in connection with the sale of non-medical welfare benefits is incorrect. Gerry Goldsholle, the former MetLife executive who invented retained asset accounts, recently stated that MetLife earns $100

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[3] A compilation of articles discussing these investigations is attached as Exhibit 3.

[4] Unless otherwise noted, the citations in this comment are to Mr. Katz's eleven (11) page written submission, and not to his abbreviated testimony, which is found on pages 16-22 of the hearing transcript.

million to $300 million a year through its retained asset account program. (See Ex. 1, p. 6). I am not sure what Mr. Katz means by "no indirect compensation," but in my world and in the world in which my clients live, $100 million to $300 million is not *nothing* – it is a substantial amount of money.

Mr. Katz also asserts that Section 408(b)(2)'s disclosure requirements should not apply to the sale of non-medical welfare benefits because, allegedly, the insurance companies that sell such products are not fiduciaries, except with respect to claim determinations. (Katz Testimony, p. 7 ("[T]he insurance company is a fiduciary with respect to claim determinations . . ., but not in any other respect"). This assertion is also incorrect. Courts have expressly and repeatedly held that insurance companies are functional fiduciaries under 29 U.S.C. § 1002(21)(A) when they retain and invest ERISA plan beneficiaries' death benefits because such conduct involves the exercise of authority and control over plan assets, and the exercise of discretionary authority and responsibility in the administration of the plans. *See Mogel, supra*, 547 F.3d at 26-27 ("In sum, the euphemistically named 'Security Account,' accompanied with a checkbook, was no more than an IOU which did not transfer the funds to which the beneficiaries were entitled out of the plan assets and hence UNUM remained a fiduciary with respect to those funds."); *Vander Luitgaren v. Sun Life Ins. Co. of Canada*, No. 1:09-cv-11410, 2010 WL 4722269, at *1 (D. Mass. Nov. 18, 2010) ("SunLife argues that the accounts represent only delays in the payment of benefits. If so, then fiduciary duties are active until the money is fully withdrawn from the individual retained asset accounts.").

The position advocated by Mr. Katz and by the ACLI is also inconsistent with existing Department of Labor opinions concerning plan fiduciaries receipt of income from the "float" that occurs between the time a benefit check is issued to a plan beneficiary and the time the check is cashed. In Advisory Opinion 93-24(A), the Department opined that a fiduciary's receipt of income

from float on benefit checks violates ERISA Section 406(b)(1)'s prohibition against plan fiduciaries self-dealing in plan assets.[5] The Department subsequently clarified that a service provider may receive income from float without violating Section 406(b)(1), but if and only if, it: (1) clearly discloses all material facts concerning such income, and (2) has no discretion to affect the amount of compensation that it receives from float. See Field Assistance Bulletin 2002-3.[6] The ACLI's assertion that Section 408(b)(2)'s disclosure requirements should not apply to income derived from non-medical welfare benefits is flatly inconsistent with Field Assistance Bulletin 2002-3's express mandate that income derived from float must be disclosed by service providers.

The insurance industry's retained asset account practices also violate Field Assistance Bulletin 2002-3's prohibition against service providers having any discretion to affect the amount of income they receive from float. For example, the insurer in the *Mogel* case unilaterally established a "Security Account" for ERISA plan beneficiaries even though the underlying insurance policies directed that death benefits be paid in a lump sum unless otherwise elected by the beneficiary. *See Mogel*, 547 F.3d at 26. By establishing retained asset accounts for beneficiaries instead of simply paying the beneficiaries the benefits to which they were entitled under the plans, the insurer, in effect, created an arrangement that would enable it to earn income on float even though such an arrangement was nowhere contemplated by the policies that the insurer sold to the plans.

It is also significant that the duration of the float that results from the establishment of retained asset accounts is typically much longer than the temporary kind of float that occurs between

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[5] A copy of Advisory Opinion 93-24(A) is attached as Exhibit 4.

[6] A copy of Field Assistance Bulletin 2002-3 is attached as Exhibit 5.

the time that a benefit check is issued to, and cashed by, a beneficiary. This is no accident. Instead, insurance companies often employ companies that specialize in retained asset account programs to help extend the duration of the accounts in their programs.[7] One such company, Advice Company Publications, is run by Gerry Goldsholle, the former MetLife executive who devised retained asset accounts. Mr. Goldsholle's company publishes a newsletter, the "Advice & Counsel Newsletter," to be distributed to beneficiaries to dissuade them from withdrawing the funds from their retained asset accounts (See Exhibit 6). The newsletter advises beneficiaries "why they should take time to decide, and avoid rushing into investment and other important decisions, such as how to invest their insurance proceeds, at a time of great emotional turmoil." (*Id.*). In marketing the newsletter to insurance companies, Mr. Goldsholle explains, "[f]rom an insurance company's point of view, [the newsletter] helps extend the duration of the [retained asset] accounts, enabling the insurance company to earn a spread on the proceeds[.]" (*Id.*). Mr. Goldsholle further explains that on average insurers can earn over $4 per day for each day a beneficiary's retained asset account remains open. (*Id.*).

It is also telling that insurance companies do not disclose to beneficiaries that their funds will be retained and invested by the insurer for the insurer's own account or that the insurer will keep most of the profits earned on the beneficiary's funds. In fact, insurers go to great lengths to hide these facts from beneficiaries. For example, insurers never use the term "retained asset account" when communicating with beneficiaries. Instead, insurers use euphemisms such as "Security Account" or "Total Control Account" to describe their retained asset accounts and liken the accounts

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[7] Several such companies exist. *See, e.g.*, Open Solutions Asset Retention, www.assetretention.opensolutions.com/index.asp; RAA Insurance Claim Solutions, http://retainedasset.com/; and Advice Company Publications, www.advicepublications.com/.

to a normal checking account in order to obscure the fact that the insurer intends to "retain" the beneficiary's funds.

The insurance industry has responded to the firestorm sparked by Bloomberg's exposure of the industry's use of retained asset account to delay payment of claims by defending the accounts as being good for beneficiaries. If retained asset accounts are as good for beneficiaries as the insurance industry professes, then why not freely disclose all material information concerning such accounts, including the profits earned by the industry through the use of such accounts, and allow beneficiaries to decide for themselves whether they would like to leave their funds with their insurer and receive a small fraction of the profits that the insurer earns on their funds? The obvious answer is that insurance companies know that most beneficiaries would elect to receive a traditional lump sum payment if they were told the truth about retained asset accounts and were given a choice. The opposition to disclosure advocated by the ACLI is thus not driven by the cost of making disclosure, but by the fear that disclosure of the immense profits derived by its members from self-dealing in beneficiaries' funds, once known, will not be tolerated.

III. The Self-Dealing Inherent in the Insurance Industry's Use of Retained Asset Accounts Is Prohibited as a Matter of Law and Cannot Be Cured Though Disclosure.

As discussed *supra*, an insurance company acts as a functional fiduciary when it retains an ERISA plan beneficiary's benefits and invests the beneficiary's funds for its own account because such conduct involves the exercise of control over plan assets and the exercise of discretion in the administration of the plans. *See Mogel, supra*, 547 F.3d at 26-27; *Vander Luitgaren, supra,* 2010 WL 4722269, at *1. An ERISA plan fiduciary is obligated to discharge its duties solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to

them, 29 U.S.C. § 1104(a)(1)(A)(i), and is prohibited from self-dealing in plan assets. 29 U.S.C. § 1106(b)(1).

A fiduciary's investment of a beneficiary's funds for the fiduciary's own account violates the duty of loyalty imposed upon the fiduciary by ERISA § 404 because such conduct is not undertaken solely in the interest of, and for the exclusive purpose of providing benefits, to the beneficiary; rather, it is done to enrich the fiduciary at the beneficiary's expense. Such self-dealing also violates ERISA § 406(b)(1)'s prohibition against self-dealing in plan assets because the retained funds are plan assets. *See Mogel, supra*, 547 F.3d at 26 (holding death benefits retained using a retained asset account remain plan assets until they are actually paid to the beneficiary). Because such self-dealing violates ERISA's fiduciary standards and prohibited transaction rules, no amount of disclosure can cure the violations.

CONCLUSION

On behalf of my clients and colleagues, I urge the Department of Labor to adopt a rule requiring robust disclosures from persons and entities that provide products and services to employee welfare benefit plans concerning the compensation they receive for such products and services. Such disclosures are necessary and desirable in order to assist plan sponsors and fiduciaries to make informed decisions when selecting service providers, and to deter service providers from devising nefarious schemes to reap undisclosed, undeserved compensation at the expense of unsuspecting plan sponsors, participants and beneficiaries.

EXHIBIT 1

Bloomberg

Fallen Soldiers' Families Denied Cash as Insurers Profit

By David Evans - Jul 28, 2010
Bloomberg Markets

The package arrived at Cindy Lohman's home in Great Mills, Maryland, just two weeks after she learned that her son, Ryan, a 24-year-old Army sergeant, had been killed by a bomb in Afghanistan. It was a thick, 9-inch-by- 12-inch envelope from Prudential Financial Inc., which handles life insurance for the Department of Veterans Affairs.

Inside was a letter from Prudential about Ryan's $400,000 policy. And there was something else, which looked like a checkbook. The letter told Lohman that the full amount of her payout would be placed in a convenient interest-bearing account, allowing her time to decide how to use the benefit.

"You can hold the money in the account for safekeeping for as long as you like," the letter said. In tiny print, in a disclaimer that Lohman says she didn't notice, Prudential disclosed that what it called its Alliance Account was not guaranteed by the Federal Deposit Insurance Corp., Bloomberg Markets magazine reports in its September issue.

Lohman, 52, left the money untouched for six months after her son's August 2008 death.

"It's like you're paying me off because my child was killed," she says. "It was a consolation prize that I didn't want."

As time went on, she says, she tried to use one of the "checks" to buy a bed, and the salesman rejected it. That happened again this year, she says, when she went to a Target store to purchase a camera on Armed Forces Day, May 15.

'I'm Shocked'

Lohman, a public health nurse who helps special-needs children, says she had always believed that her son's life insurance funds were in a bank insured by the FDIC. That money -- like $28 billion in 1 million death-benefit accounts managed by insurers -- wasn't actually sitting in a bank.

It was being held in Prudential's general corporate account, earning investment income for the insurer. Prudential paid survivors like Lohman 1 percent interest in 2008 on their Alliance Accounts,

while it earned a 4.8 percent return on its corporate funds, according to regulatory filings.

"I'm shocked," says Lohman, breaking into tears as she learns how the Alliance Account works. "It's a betrayal. It saddens me as an American that a company would stoop so low as to make a profit on the death of a soldier. Is there anything lower than that?"

Millions of bereaved Americans have unwittingly been placed in the same position by their insurance companies. The practice of issuing what they call "checkbooks" to survivors, instead of paying them lump sums, extends well beyond the military.

Touching Americans

In the past decade, these so-called retained-asset accounts have become standard operating procedure in an industry that touches virtually every American: There are more than 300 million active life insurance policies in the U.S., and the industry holds $4.6 trillion in assets, according to the American Council of Life Insurers.

Insurance companies tell survivors that their money is put in a secure account. Neither Prudential nor MetLife Inc., the largest life insurer in the U.S., segregates death benefits into a separate fund.

Newark, New Jersey-based Prudential, the second-largest life insurer, holds payouts in its own general account, according to regulatory filings.

New York-based MetLife has told survivors in a standard letter: "To help you through what can be a very difficult, emotional and confusing time, we created a settlement option, the Total Control Account Money Market Option. It is guaranteed by MetLife."

No FDIC Insurance

The company's letter omits that the money is in MetLife's corporate investment account, isn't in a bank and has no FDIC insurance.

"All guarantees are subject to the financial strength and claims-paying ability of MetLife," it says.

Both MetLife, which handles insurance for nonmilitary federal employees, and Prudential paid 0.5 percent interest in July to survivors of government workers and soldiers. That's less than half of the rate available at some banks with accounts insured by the FDIC up to $250,000.

Bank of New York Mellon Corp. handles the paperwork and monthly statements for customers with MetLife "checking accounts." The insurance company, not the bank, most recently reported holding

about $10 billion in death benefits, in 2008.

The "checkbook" system cheats the families of those who die, says Jeffrey Stempel, an insurance law professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas, who wrote 'Stempel on Insurance Contracts' (Aspen Publishers, 2009).

'Bad Faith'

"It's institutionalized bad faith," he says. "In my view, this is a scheme to defraud by inducing the policyholder's beneficiary to let the life insurance company retain assets they're not entitled to. It's turning death claims into a profit center."

Prudential's Alliance Account is helpful to families of soldiers, says company spokesman Bob DeFillippo.

"For some families, the account is the difference between earning interest on a large amount of money and letting it sit idle," he says. Prudential follows the law, he says.

"We fully and regularly disclose the nature and terms of the account to account holders," DeFillippo says. "We make it clear that the money can be withdrawn at any time by simply writing a draft."

Metlife spokesman Joseph Madden says his company's customers are very happy with the Total Control Account.

'Overwhelmingly Positive'

"The feedback from TCA customers has been overwhelmingly positive," he says. "The TCA affords beneficiaries security, peace of mind and time to make an informed decision -- while earning interest in the interim."

Madden says the company was paying some survivors 0.5 percent in July while some others got 1.5 percent or 3 percent, depending on the age and origin of insurance accounts. The accounts don't violate any laws, Madden says, and are authorized by New York state insurance law.

Insurers are holding onto at least $28 billion owed to survivors, according to three firms that handle retained-asset accounts for about 130 life insurance companies. There are no public records showing how much companies are holding in these accounts.

The "checks" that Cindy Lohman wrote, the ones rejected by retailers, were actually drafts, or IOUs, issued by Prudential. Even though the "checks" had the name of JPMorgan Chase & Co. on them,

Lohman's funds weren't in that bank; they were held by Prudential.

Federal Bank Law

Before a check could clear, Prudential would have to send money to JPMorgan, bank spokesman John Murray says.

Insurance companies -- in addition to holding onto the money of survivors, paying them uncompetitive interest rates and giving them misleading guarantees -- may be violating a federal bank law. A 1933 statute makes it a felony for any company to accept deposits without state or federal authorization.

That means only banks or credit unions can accept deposits, says Arthur Wilmarth, a professor at George Washington University Law School in Washington who has testified before Congress about banking regulations.

If a prosecutor pressed an insurance company, retained- asset accounts could be outlawed because insurers say they deposit money into these accounts and don't have bank charters or banking regulation, Wilmarth says. MetLife also offers its own version of certificates of deposit.

"If it swims, quacks and flies like a duck, the court could decide that it is indeed a duck," he says. "You then potentially could have a criminal violation."

Potential Bank Run

This unregulated quasi-banking system operated by insurers has none of the protections of the actual banking system. Lawrence Baxter, a professor at Duke University School of Law in Durham, North Carolina, says the potential exists for a catastrophe.

If one insurer is unable to meet its obligations on retained-asset accounts, people could lose faith in other companies and demand immediate payment, triggering a panic, says Baxter, who has consulted with federal agencies on financial regulation.

The government established the FDIC in 1933 after frantic depositors tried to pull their money from banks. The federal government has no such program for death-benefit accounts.

"There's more than $25 billion out there in these accounts," Baxter says. "A run could be triggered immediately by one insurance company not being able to honor its payout. The whole point of creating the FDIC was to put an end to bank runs."

No Federal Regulation

The sweeping financial regulatory legislation signed by President Barack Obama on July 21 doesn't address retained-asset accounts. It creates a new federal insurance office, which won't be a regulator. It will collect information, monitor the industry for systemic risk and consult with state insurance regulators.

An industry with $19.1 trillion in potential liabilities will remain unregulated by the federal government. In 2008, insurers approved claims totaling $60 billion in death benefits, according to the life insurance council.

The federal government doesn't even regulate the life insurance it supplies, via MetLife, to its own employees in a program called Federal Employees' Group Life Insurance. As the VA does for soldiers, the U.S. Office of Personnel Management sends handbook to nonmilitary government workers -- some 4 million active employees and retirees.

The handbook says their life insurance policies automatically pay out death benefits in the form of a "money- market-account checkbook." The 217-page handbook omits that the money isn't FDIC insured and will stay with MetLife until someone writes a "check."

'Unfair Advantage'

This lack of disclosure is unconscionable, says Harvey Goldschmid, a commissioner of the U.S. Securities and Exchange Commission from 2002 to 2005.

"I can't imagine why bank regulators haven't been requiring a prominent 'no FDIC insurance' disclosure," says Goldschmid, who's now a law professor at Columbia University in New York. "This system works very badly for the bereaved. It takes unfair advantage of people at their time of weakness."

The closest relative to retained-asset accounts may be money-market mutual funds, which are pools of cash invested in short-term debt securities.

Money Market Rules

The SEC requires fund companies to warn investors that money market funds don't have FDIC insurance. It also mandates that fund managers provide a prospectus, that they invest in specific types of safe debt and that they post a detailed schedule of their investments monthly on their websites.

Insurers' retained-asset accounts have none of those regulatory protections.

A June 2009 MetLife standard condolence letter to survivors leaves out that accounts aren't in a bank and aren't federally insured. In June 2010, 25 years after MetLife invented retained- asset accounts, the company released a customer agreement that does disclose that retained assets aren't in a money market account nor in a bank and that they have no FDIC insurance.

"The assets backing the Total Control Accounts are maintained in MetLife's general account and are subject to MetLife's creditors," the agreement says. That language contradicts the federal employee handbook, which says survivors get a money market account.

Gerry Goldsholle, the man who invented retained-asset accounts, says MetLife makes $100 million to $300 million a year from investment returns on the death benefits it holds. A former president of MetLife Marketing Corp., Goldsholle, 69, devised the accounts in 1984. He's now a lawyer in private practice in Sausalito, California.

'This Is Crazy'

Goldsholle says he pondered the billions of dollars of death-benefit proceeds the company paid out each year.

"I looked at this and said this is crazy," says Goldsholle, who left the firm in 1991. "What are we doing to retain some of this money? It's very expensive to bring money in the front door of an insurance company. You're paying very large commissions and sales expenses."

So he came up with a way for MetLife to hold onto death benefits.

"The company would win because we would make a nice spread on the money," Goldsholle says, while customers would earn interest on their accounts. MetLife, he says, can earn 1 to 3 percentage points more from its investment income -- mostly from bonds -- than it pays out to survivors.

Misconceptions

The accounts Goldsholle invented have spread much faster than the ability of state regulators to track them -- or even to understand how they work. Ted Hamby, North Carolina's deputy insurance commissioner for life and health, says he believes retained-asset accounts have FDIC protection.

"Whatever money is on deposit in that checking account will be insured, up to the limits of the FDIC," he says. He's wrong. No retained-asset accounts have FDIC coverage.

In Connecticut, where 106 insurance companies are based, state insurance department manager for market conduct Kurt Swan also says that retained-asset accounts are kept in banks, with FDIC coverage.

"I think they're just trying to offer some flexibility to the beneficiary," he says. Swan and his colleague, William Arfanis, the department's principal financial examiner, both say the insurers don't profit from the retained-asset accounts. That too is wrong. The companies do earn investment gains on death benefits.

Some Rules

Just six states had any rules for retained-asset accounts as of July 2009, according to the National Association of Insurance Commissioners. Arkansas, Colorado, Kansas, Nevada, North Carolina and North Dakota require insurers to disclose fees and interest rates and to tell survivors they may withdraw all of the money by writing a single check.

Maryland, which isn't on the NAIC list, also has rules.

Pennsylvania Insurance Commissioner Joel Ario, whose state has no rules for retained-asset accounts, says he has asked his staff to prepare a regulation forbidding insurance companies from using such accounts as the default method of paying a death claim.

"I haven't heard a plausible argument about why these accounts are better for the consumer," Ario says.

If state insurance regulators have paid scant attention to retained-asset accounts, state bank regulators have taken an even more hands-off approach.

'Not Drawn Attention'

"Quite honestly, we deal with issues that our members want us to deal with," says Michael Stevens, senior vice president for regulatory policy at the Washington-based Conference of State Bank Supervisors. "This is not one that has drawn their attention."

Three companies have not only noticed but have also profited by handling retained-asset accounts for insurers. Open Solutions Inc., based in Glastonbury, Connecticut, oversees 400,000 accounts for 67 insurance companies.

Open Solutions sends out "checkbooks," prints periodic statements and computes accrued interest for accounts with total deposits of $10 billion, says Jay Woldar, director of sales and account

management at Open Solutions.

One of its competitors, Bank of New York Mellon, administers more than 500,000 retained-asset accounts holding a total of $14 billion, including MetLife's retained assets. Chicago-based Northern Trust Corp. handles about $4 billion in 125,000 accounts, spokesman John O'Connell says.

Survivors generally don't touch these accounts immediately.

Accounts Stay Opened

"About 40 percent of the money stays in for more than a year," Woldar says. Insurers can have use of survivors' money for years, even decades, says Randi Lichtenstein, a product line manager at Bank of New York.

"They can stick around for quite a while," she says. "There are accounts that all insurance companies have on these platforms that go back 10, 15, 20 years."

MetLife's Madden says most of its customers' retained-asset accounts are closed within one year. About 28 percent of survivors of soldiers and veterans keep their retained-asset accounts open for more than two years, the VA says.

During a routine audit completed in 2004, the New York State Insurance Department found that 1,476 retained-asset accounts, worth a total of $33.5 million, at Hartford, Connecticut-based Phoenix Life Insurance Co., had been dormant for more than three years.

In New York, funds in an account that remains dormant for more than three years may be turned over to the state. Phoenix spokeswoman Alice Ericson says the company now has a policy of sending letters to people whose accounts have been inactive for two years.

Inactive Accounts

Almost one-third of the 6,890 retained-asset accounts run by Mony Life Insurance Co. were inactive for more than three years, New York auditors found in 2002. Mony is now owned by Axa SA, Europe's second-largest insurer by market value.

A few people have sued insurers over the use of retained- asset accounts. Prudential won a lawsuit in 2009 in which a survivor complained about the Alliance Account. MetLife has a case pending in which a survivor says that she was cheated by the retained-asset account. In court-filed papers, MetLife denies any wrongdoing.

There has been only one ruling by a federal appellate court on the substance of such accounts -- and it went against an insurance company.

After a federal judge in Boston dismissed a policyholder suit claiming that Chattanooga, Tennessee-based insurer Unum Group was stealing account earnings from survivors, the U.S. Court of Appeals for the First Circuit overruled the lower court in 2008. It reinstated the case.

'Euphemistically Named'

"The euphemistically named 'Security Account,' accompanied with a checkbook, was no more than an IOU which did not transfer the funds to which the beneficiaries were entitled out of the plan assets," the three-judge panel wrote.

Unum spokeswoman Mary Clarke Guenther says retained-asset accounts are a commonly accepted practice in the industry. The case is pending.

Absent regulatory or legal intervention, bereaved family members like Cindy Lohman will continue to find death benefits going into retained-asset accounts. Her son, Ryan, posthumously received a Purple Heart and Bronze Star Medal for sacrificing his life to save fellow soldiers in Afghanistan in August 2008.

He had ordered a Humvee to swerve to avoid an explosive device, exposing himself to its deadly blast.

'Accept The Reality'

Three days after learning of her son's death, Lohman says, an Army casualty assistance officer came to her home, explaining that Ryan had a life insurance policy and that her signature was needed to release the money.

"By signing that, it forced me to accept the reality that he was dead and not coming back," she says.

Since 1999, the VA has allowed Prudential to send survivors "checkbooks" tied to its Alliance Account. In 2009 alone, the families of U.S. soldiers and veterans were supposed to be paid death benefits totaling $1 billion immediately, according to their insurance policies. They weren't.

Prudential's VA policies promise either a lump sum payout or 36 monthly payments. About 90 percent of survivors, including Lohman, choose to receive the full amount upfront. When they do, they don't get a check; they get a "checkbook."

Under a 2008 law, survivors covered by Prudential's VA policy are allowed one year to put death

benefits into a Roth IRA, allowing them to earn investment gains for the rest of their lives tax-free. Prudential never informed Lohman, she says.

'If They Had Told Me'

"I definitely would have done that if they had told me," Lohman says.

Even Stephen Wurtz, deputy assistant director for insurance at the VA, who has overseen the insurance program for 25 years, has been kept in the dark by Prudential.

"Prudential runs the program on a cost-reimbursement basis only," he initially said, referring to the $4.2 million in fees the VA paid Prudential in 2009. "They're really good guys. They do it patriotically. They don't make any money from the Alliance Account."

Wurtz, 62, said he had believed that the Alliance Account money went into a bank. After he learned that the payouts actually stayed in Prudential's general fund, Wurtz says, he asked Prudential how much money the insurance company made from these accounts and how many dollars it held in retained assets.

Prudential declined to answer, saying that information was proprietary, Wurtz says.

'Maybe I Didn't'

Prudential, which has had the insurance contract with the VA since 1965, pitched the checkbook payout to the VA in 1999 as an added benefit to survivors, Wurtz says. The government agency accepted Prudential's offer, he says.

"Maybe I didn't ask enough questions," he says.

Printed on each "check," next to "Prudential's Alliance Account" is the name of JPMorgan, the second-biggest U.S. bank by assets. JPMorgan spokesman Murray declined to say how much the bank is paid for its role with Prudential.

The way Prudential has set up the "checks" implies that JPMorgan stands behind the accounts and that they are thus backed by the FDIC, Duke's Baxter says.

"That's misleading the beneficiaries," he says.

"We disclose the roles of all companies involved in administering these accounts," Prudential's DeFillippo says. JPMorgan's Murray declined to comment.

Prudential's general account earned 4.4 percent in 2009, mostly from bond investments, according to SEC filings. The company has paid survivors 0.5 percent in 2010.

'It's Shameful'

"It's shameful that an insurance company is stealing money from the families of our fallen servicemen," says Paul Sullivan, who served in the 1991 Gulf War as an Army cavalry scout and is now executive director of Veterans for Common Sense, a nonprofit advocacy group based in Washington. "I'm outraged."

Sullivan, a project manager at the VA's benefits unit from 2000 to 2006, says he was never told Prudential kept money and earned investment gains from soldiers' insurance payouts instead of sending it to survivors.

"There shouldn't be secret profits," he says. "This should be transparent. The lack of oversight is appalling."

It's not much different for the 4 million nonmilitary U.S. government employees and retirees -- including staff of the FDIC -- covered by MetLife policies. That program, begun in 1965, averages more than $2 billion in death benefits claimed every year, the government says.

Payouts are handled by the Office of Federal Employees' Group Life Insurance. That makes it look like the government is taking care of its employees' insurance coverage. It isn't. That "office" is a unit of MetLife.

MetLife Holds the Money

Edmund Byrnes, a spokesman for the Office of Personnel Management, which oversees MetLife's federal employee contract, says MetLife segregates death benefits into beneficiary accounts after it approves death claims.

"Once MetLife transfers the funds to the Total Control Account, the monies are no longer under MetLife's control," Byrnes says.

MetLife spokesman Madden says something different.

"The assets that back the liabilities on all the TCAs are placed in MetLife's general account," he says.

Back at the Veterans Affairs office, Deputy Assistant Director Wurtz, who's a civilian employee, says he now understands for the first time that since he's covered by the federal insurance program, his

own wife could receive a MetLife "checkbook" someday.

'Ripping Off Their Own'

"Uncle Sam is ripping off their own," Wurtz says. "My wife would get the money, and they would blood-suck some of it out of her."

It took Wurtz, who's been working with insurers for most of his career, more than a decade to understand how retained-asset accounts work. Companies like MetLife and Prudential have never told millions of Americans with insurance policies that when they die, the insurer plans to hold their family's money in its own account to make investment gains from the death benefit.

"It's outrageous that somebody's profiting off other people's grief," says Mark Umbrell of Doylestown, Pennsylvania. His 26-year-old son, Colby, an Army Airborne Ranger who earned a Bronze Star and a Purple Heart, was killed in Iraq in May 2007. Umbrell was among those who got a "checkbook" account.

"I think we're being taken," he says.

The question for Umbrell, Lohman and a million others with these accounts is whether anything will change. State bank regulators say if there are to be any reforms, they should be made by insurance departments. Officials at those state agencies often say they don't even understand what a retained-asset account is.

"It's flown under the radar," professor Stempel says. "Regulators have not done their job."

Until public officials wake up, the bereaved will remain a secret profit center for the life insurance industry.

To contact the reporter on this story: David Evans in Los Angeles at davidevans@bloomberg.net.

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EXHIBIT 2

Bloomberg

Forged MetLife `Checks' Show Retained-Asset Account Risks

By David Glovin - Aug 24, 2010

After her mother died, Jasmine Williams was assured by MetLife Inc. that her $101,819 in life insurance benefits were safe and was sent what the company called a guaranteed money market "checkbook" in 2002.

The next year, Williams, then 19, told New York-based MetLife that a cousin had taken $48,900 by forging her name on 12 checks. Williams, of Rougemont, North Carolina, sought reimbursement. The insurance company and Pittsburgh-based PNC Bank NA, which processed MetLife checks, refused to cover Williams's losses -- each denying responsibility -- federal civil court records show.

Had Williams's money been in a bank, instead of an account managed by an insurer, federal and state law would have required the bank to verify signatures on checks and cover losses. Williams's predicament spotlights the uncertainties people face by accepting so-called retained-asset account checkbooks from insurers.

"It's high risk for the beneficiary to have money in these insurance accounts," says Robert Hunter, director of insurance for the Consumer Federation of America in Washington. "I've been telling people to get their money out. You have what I consider a little black hole."

Bloomberg Markets magazine reported in its September issue that MetLife and Newark, New Jersey-based Prudential Financial Inc. are among about 130 life insurance companies holding in their own general corporate accounts at least $28 billion they owe survivors.

Federal Probes

The insurers earn hundreds of millions of dollars a year in investment gains on the death benefits, including those due to families of U.S. military service members killed in combat in Iraq and Afghanistan.

After the story was published by Bloomberg News on July 28, New York Attorney General Andrew Cuomo opened a fraud investigation; the Georgia and New York insurance departments began probes

of these practices; the U.S. Department of Veterans Affairs said it would review its own insurance program; and the U.S. House Oversight and Reform Committee said it would investigate insurance benefits for 6 million U.S. soldiers.

MetLife and Prudential say they're cooperating with all investigators. Both companies say they guarantee their retained- asset accounts to be safe and secure. They say the accounts are a service to survivors because they allow them time to decide what to do with their money.

'All the Time'

Jeffrey Stempel, an insurance law professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas and author of "Stempel on Insurance Contracts" (Aspen Publishers, 2009) says that reasoning makes no sense.

"Even a person who doesn't know much about finance could take all the time in the world and earn interest with better protection in a standard FDIC-insured bank account," Stempel says. "Insurers use retained-asset accounts so they can increase profits -- not to protect families."

Instead of sending survivors a check when a death claim is approved, life insurers now often provide families with interest-bearing "checkbook" accounts that aren't backed by the Federal Deposit Insurance Corp. The "checks" are actually drafts, or IOUs, citing the name of a bank. Survivors can withdraw some or all of the money by using the drafts, which alert a bank to get cash from an insurer.

Leaving money with insurance companies opens survivors to risks they wouldn't face if their money was in FDIC-insured bank accounts.

'I'd Never'

People have found that they lacked immediate access to their money and had fewer privacy protections. They have been shunted between insurers and the banks named on drafts, and resorted to filing lawsuits to determine what rights they have when their money is held by carriers. Some have lost money.

"I'd never keep money with an insurer, and I'd never recommend a client do it," says Gerry Beyer, who teaches estate planning at Texas Tech University School of Law in Lubbock. "It isn't financially protected."

Every state has an insurer guaranty association that's supposed to protect life insurance policies. These groups request contributions from solvent insurers in the same state if a carrier fails. Unlike

the FDIC, guaranty associations have no backing from the U.S. Treasury Department.

'Red Flag'

Federal and state lawmakers say retained-asset accounts may not be covered by guaranty funds. MetLife tells survivors whose death payouts stay with the firm that they're creditors and should have no expectation of a "special relationship" with the insurer.

"It raises a red flag as to whether this would be covered," says U.S. Representative John Garamendi, a former California insurance commissioner. If an insurer fails, survivors with money in retained-asset accounts can't rely on these guaranty associations, he says. "You've got the policyholders on one side who want their hands on the assets," the California Democrat says. "On the other side you have general creditors. You're going to have a lawsuit."

When Executive Life Insurance Co., then California's largest insurer, collapsed in 1991, owners of some retained- asset accounts lost money. Those with accounts holding more than $300,000 were unable to recover about 8 percent of their funds above that amount, according to the National Organization of Life and Health Insurance Guaranty Associations in Herndon, Virginia.

Customers Compete

Garamendi, who as California's insurance commissioner helped oversee the insurer's liquidation, says customers competed in court with company debtors and other obligation holders to recover their losses.

Some Executive Life accountholders couldn't get immediate access to their money, records of the Arkansas Department of Insurance show.

Lee Douglass, who was Arkansas insurance commissioner from 1990 to 1997, says when a carrier collapses, survivors with money in retained-asset or other accounts with the insurer may be denied instant access to funds. He says he doesn't remember what happened to the Executive Life account holders.

"The court may for a period of time freeze accounts -- not only these accounts but everything else," Douglass says.

Peter Kochenburger, executive director of the Insurance Law Center at the University of Connecticut, says the Executive Life failure was unusual. He says he doubts that major insurance companies will collapse. "Of course, we've seen some of the biggest financial companies in the world disappear, and

who would have thought that?" he says.

Forged Checks

Jasmine Williams's complaint involved a solvent company -- the largest life insurer in the U.S.

Williams sued after she told MetLife that her cousin, Latshia Sneed, had forged her name on a dozen of her MetLife "Total Control Account" drafts, taking $48,900.

"At the time of the forgeries, MetLife had in place a guarantee and/or insurance policy that provided for payment by MetLife to Ms. Williams in the event that the funds were no longer available to Ms. Williams because of fraud or other occurrences unauthorized by Ms. Williams," the lawsuit says.

Using Williams's name, Sneed had asked PNC Bank, a unit of PNC Financial Services Group Inc., to change her cousin's address to her own and asked for a new "checkbook," Williams says in the lawsuit.

MetLife argued in court that PNC, the bank that processes its drafts, was ultimately responsible for covering the losses. In a court filing, it wrote, "To the extent MetLife is or may be liable, which it expressly denies, it claims a right to full indemnity from PNC."

Refused Responsibility

The insurer also said in court that Williams had given her "checkbook" to Sneed. Sneed said in court that Williams allowed her to use the account, while also saying she owed Williams money. She didn't say how much. Sneed couldn't be reached for comment.

Williams, who didn't return calls seeking comment, denied in court that she had given Sneed permission to use the MetLife drafts. "The fraudulent transactions were done without the knowledge or authorization of Ms. Williams," her lawsuit says.

PNC refused in court to accept responsibility. The bank argued that it doesn't have any legal obligation to non- customers.

The case didn't go to trial. PNC and MetLife settled after U.S. Magistrate Judge Russell Eliason in Durham, North Carolina, rejected PNC's argument that it didn't have a duty to Williams to safeguard her money, according to court records. Williams's lawyer, Robert Perry, says PNC and MetLife paid Williams a portion of the $48,900. He declined to say how much.

'Vastly Different'

"This is vastly different from having a relationship with a bank," Perry says. "The person doesn't have ready access to the funds and doesn't have a relationship with someone in the bank that she can deal with. She doesn't have total control."

MetLife spokesman Christopher Breslin says such incidents are rare.

"It is important to put this in the appropriate context and note that almost 5 million Total Control Account drafts have been successfully processed since the beginning of 2007," Breslin says. "Feedback from our customers has been overwhelmingly positive."

PNC spokesman Fred Solomon declined to comment.

Williams wasn't the first survivor with a retained-asset account who got caught between an insurer and a bank.

When Ella Kelley's in-home care aide stole drafts for her MetLife retained-asset account, Kelley lost $9,308 of the $10,000 she received after her husband's death, according to a lawsuit she filed in the Montgomery County Court of Common Pleas in Ohio.

State Street

MetLife told Kelley to recover her losses from a unit of Boston-based State Street Corp., which processed the MetLife drafts, according to the lawsuit against State Street.

State Street refused to pay Kelley anything and, in court, it accused the woman of negligence. Kelley, then 75, filed her lawsuit in June 1994 and died three months later, leaving the executor of her estate to pursue the case. The bank argued in court that the lawsuit should be dismissed because State Street didn't do business in Ohio.

In 1996, the Ohio Court of Appeals denied State Street's request.

"We find it incredulous that State Street did not foresee being haled into court in Ohio as a result of its obligations to Ohio residents," the court wrote.

Four Years Later

More than four years after the theft of Kelley's checks -- and after the court ruling -- State Street paid the Kelley estate the full amount of the stolen money, the estate's lawyer, Paul Roderer, says.

"That's exactly the situation where a beneficiary holding these would be stuck in the middle of

arguments by an insurer and a bank," says Lawrence Baxter, a professor at Duke University School of Law in Durham, North Carolina. "It highlights the disarray of this whole practice."

State Street spokeswoman Arlene Roberts declined to comment. The American Council of Life Insurers says banks are obligated to scrutinize signatures on drafts.

At least one retained-asset holder has also concluded that the accounts aren't shielded by the same privacy protections afforded to those with bank accounts.

After Bloomberg Markets reported that families of fallen soldiers with retained-asset accounts usually don't receive immediate cash payouts, Prudential gave information about the transactions of Cindy Lohman, the mother of a serviceman who died in Afghanistan, to New Jersey insurance regulators, which the state had asked for, Prudential spokesman Bob DeFillippo says.

Felt Betrayed

Lohman, who had said in the Bloomberg Markets story that she felt betrayed by the insurance industry because it was profiting from the death of U.S. soldiers, says no one ever asked her whether Prudential or anyone else could release her records. She hadn't complained to regulators or asked them to scrutinize her account, she says.

On Aug. 10, Thomas Considine, New Jersey's banking and insurance commissioner, said publicly that his department had reviewed Prudential's report about 25 checks Lohman wrote on her account and found that the Newark-based insurer had acted properly.

Ed Rogan, a spokesman for Considine, said the commissioner spoke about Lohman's account only after being asked in public whether Prudential had acted properly.

Right to Privacy

Had Lohman's account been in a bank, the Federal Right to Financial Privacy Act would have barred banking regulators from publicly discussing or disclosing her account information, even to other government agencies, says Dean DeBuck, a spokesman for the U.S. Office of Comptroller of the Currency.

"The release of nonpublic privacy information showed a significant lack of dignity and respect," Lohman says. "Acts like this border on intimidation."

MetLife first established retained-asset accounts in 1984, and judges are still trying to figure out what rights survivors have. Courts in Massachusetts, Nevada, New Jersey and New York have been asked

to resolve what responsibilities insurance companies have to the holders of retained-asset accounts.

"There are inconsistencies in the courts," says Eric Pan, a professor of corporate governance and financial regulation at the Benjamin N. Cardozo School of Law in New York. "We lawyers would say the body of law is developing. There's uncertainty."

Bank customers may open multiple accounts that each carry $250,000 in FDIC protection, compared with the single $300,000 guarantee that most state insurance funds provide, according to Larry Ginsburg, a certified financial planner in Oakland, California.

There's "absolutely no reason" to leave funds in retained-asset accounts, Ginsburg said.

Hunter, who was Federal Insurance Administrator from 1974 to 1978, says that with the multiple risks of insurers holding death benefits, survivors should stay away. All they have to do, he says, is put their money into FDIC-insured bank accounts.

MetLife fell 22 cents to $36.92 at 11:46 a.m. in New York Stock Exchange composite trading. The shares had gained 5.1 percent this year before today.

To contact the reporter on this story: David Glovin in federal court in New York at dglovin@bloomberg.net.

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EXHIBIT 3

Bloomberg

FDIC Reviews Insurers' Retained Death Benefits

By Andrew Frye - Aug 12, 2010

The Federal Deposit Insurance Corp. is reviewing whether life insurers misled customers about retained death benefits, and urged companies to clearly disclose that the funds aren't guaranteed by the U.S. government.

Chairman Sheila Bair said an initial review indicates consumers may mistakenly believe the accounts are insured by the FDIC, according to a letter to the National Association of Insurance Commissioners. It is illegal to misrepresent FDIC coverage, Bair said in the letter dated Aug. 5 and posted on the agency's website yesterday.

"I am writing to express our serious concerns," Bair says in the letter. Life insurers "should explain that these accounts are not FDIC-insured, and that fact should be clearly and conspicuously disclosed not only to policyholders, but also to their beneficiaries at the time of the policyholder's death."

U.S. life insurers have drawn fire from state and national elected officials since Bloomberg Markets magazine reported last month that more than 100 carriers profit by holding and investing $28 billion owed to life-insurance beneficiaries. Retained-asset accounts are backstopped by insurer guaranty associations in the event a carrier fails, according to MetLife Inc., the biggest U.S. life insurer, and the National Organization of Life & Health Insurance Guaranty Associations.

"If that is the case, it would seem disclosure and explanation of these guarantees to beneficiaries and policyholders would be appropriate," Bair wrote. "We believe it is important to avoid public confusion."

Investigations

New York Attorney General Andrew Cuomo opened a fraud investigation into the accounts, and Georgia's insurance commissioner is reviewing the matter. Benefits retained from soldiers are the subject of probes by the U.S. Department of Veterans Affairs and the House Oversight and Government Reform Committee.

"We have very serious concerns about a practice that the consumer may not understand, that may not be fully disclosed," John Oxendine, the Georgia regulator, said yesterday. "I have ordered a full-

blown market-conduct exam" of MetLife and Prudential Financial Inc., Oxendine said.

Life insurers settle death claims by issuing IOUs. Beneficiaries are told they hold interest-bearing retained-asset accounts, while insurers hold the funds and accrue investment income. MetLife in New York and Newark, New Jersey-based Prudential are cooperating with Georgia's investigation, spokesmen for the companies said.

House Committee

Jane Cline, NAIC's president, said in a Bloomberg Television interview last week that insurers must improve disclosure about the accounts. The House Oversight and Government Reform Committee plans to investigate insurance benefits for U.S. soldiers, Representative Edolphus Towns, the New York Democrat and committee chairman, said yesterday.

The American Council of Life Insurers, a Washington-based industry lobby, said last week it was "very proud" of the accounts, because they give the bereaved time to decide what to do with the money.

To contact the reporter on this story: Andrew Frye in New York at afrye@bloomberg.net

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INSURANCE NEWS

RAAs: Regulatory Status May Be Unclear

It was Eddie, our youngest actuary, who suggested cutting the premiums in half.
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By ARTHUR D. POSTAL
Published 8/11/2010

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WASHINGTON BUREAU -- State insurance regulators may not have any explicit legal authority to regulate retained asset accounts, according to Robert Hunter, a former Texas insurance commissioner.

Hunter, director of insurance at the Consumer Federation of Insurance, Washington, says the accounts are "extra-contractual," because there is nothing in the typical life insurance policy that provides for use of the accounts.

RAAs are not insurance products, because offering them involves no transfer of risk, Hunter says.

"Insurance regulators don't have the right to oversee them, approve them, set standards for them, or anything, nor do the guaranty funds apply," Hunter says.

Because of the lack of disclosure, the apparent lack of regulatory protection, and the apparent lack of guaranty fund protection, use of RAAs is "very high risk" for life insurance policyholders and policyholders' beneficiaries, Hunter says.

RAAs are accounts life insurers use to hold beneficiaries' benefits until the beneficiaries withdraw the cash using checks, payment cards or other means.

Critics say life insurers earn high returns on the cash and pay beneficiaries low rates without giving the beneficiaries adequate notice that the cash is held in something other than a bank account insured by the FDIC. Supporters say RAAs give grieving beneficiaries a chance to deal with their emotions before addressing financial concerns, and that funds guaranteed by an insurer may be safer than bank deposits insured by the FDIC.

In other RAA news:

- The New Jersey Department of Banking and Insurance says its commissioner told Prudential Financial Inc., Newark, N.J. (NYSE:PRU), that the company had "acted properly" in connection with administration of an RAA.

Tom Considine, the state insurance and banking commissioner, approved of the way Prudential had handled a $400,000 life insurance benefit paid in connection with the death of a soldier killed in Afghanistan in 2008, according to Marshall McKnight, a New Jersey department spokesman.

The beneficiary of the policy, and of the RAA, was the soldier's mother.

Considine issued a statement about the matter in response to a letter Prudential sent him Aug. 4.

Considine told Prudential that the department's investigation into the case "further reassures this department of the value of 'retained asset accounts.'"

Robert DeFillippo, a Prudential spokesman, confirmed that Considine had spoken to

top officials at Prudential in connection with the Aug. 4 letter. DeFillippo said he could not release the letter because the letter was a confidential communication with regulators.

- Rep. Edolphus Towns, D-N.Y., chairman of the House Oversight and Government Reform Committee, is opening an investigation of Prudential RAAs.

Prudential administers the Service Members Group Life Insurance program for the military and the Veterans' Group Life Insurance program for the Veterans Affairs Department.

Towns has written to Prudential's John Strangfeld to tell him about the investigation.

"I am particularly concerned that some families of soldiers killed while serving their country may not understand that they have the right to this money up

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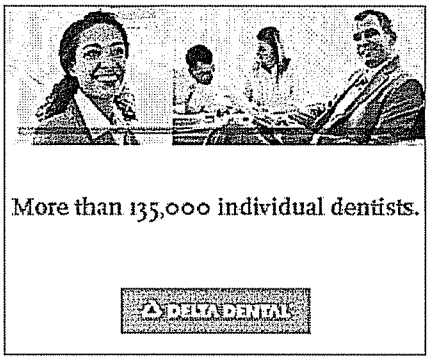
INSURANCE NEWS

RAAs: Regulatory Status May Be Unclear



By ARTHUR D. POSTAL
Published 8/11/2010

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front," Towns says. "It seems unjust that the insurance company can take control of this money without first being granted permission from those it belongs to."

Towns has asked for extensive information about Prudential's handling of these life insurance benefits payments.

Towns says he is "particularly interested" in whether the families who get the benefits are fully informed of their options; whether the money is adequately guaranteed; and whether the interest paid on the accounts is adequate.

Towns also cited reports that some merchants may not have honored checks drawn on RAAs.

"Our preliminary investigation indicates that Prudential is not alone in handling life insurance payouts this way," Towns says. "I will continue to look into what may be a pervasive practice in the life insurance industry."

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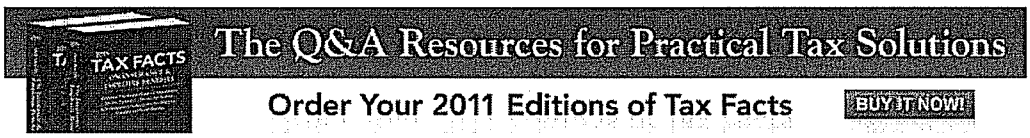

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EXHIBIT 4

U.S. DOL

PWBA Office of Regulations and Interpretations

Advisory Opinion

September13, 1993

Roger W. Thomas
Staff Attorney
Department of Financial Institutions
Fourth Floor, The John Sevier Building
500 Charlotte Avenue
Nashville, TN 37243-0705

93-24A
ERISA SEC.
406(b)(1),
406(b)(3)

Dear Mr. Thomas:

This is in response to your inquiry whether certain transactions engaged in by a Tennessee bank are consistent with the Employee Retirement Income Security Act of 1974 (ERISA). In particular, you call attention to an asserted "common industry practice" whereby banks acting as agents or trustees for employee benefit plans earn interest for their own accounts from the "float" when a benefit check is written to a participant until the check is presented for payment.

You indicate that a company (Trust Company), which is chartered under Tennessee law as a non-depository bank limited to trust powers, acts as an agent or trustee for various employee benefit plans. It also offers various collective investment funds in which plans invest. A national bank (National Bank) located in Tennessee serves as custodian for some of these plans.

In connection with the administration of the plans, Trust Company maintains accounts at National Bank, including a "General Account" and a "Disbursement Account." When Trust Company is directed to liquidate pooled fund assets to pay benefits, unless it is specifically directed to wire the funds to the participant, it transfers the funds to the General Account and simultaneously issues a check payable to the participant from the Disbursement Account. When checks are presented for payment, funds are wired from the General to the Disbursement Account. In the interim, Trust Company earns income on such funds for its own account, pursuant to a retail repurchase agreement with National Bank.

You question whether the payment of this income to Trust Company is a prohibited receipt by a fiduciary of consideration from a party dealing with the plan in connection with a transaction involving the assets of the plan under section 406(b)(3) of ERISA. You also express concern that the Trust Company may be violating ERISA by dealing with National Bank, given National Bank's relationship to the plans.

Trust Company, through its attorney, contends that once a check is written to a participant, corresponding amounts in the General Account cease to be plan assets. In support of this argument Trust Company relies upon the first example of the participant contribution regulation in 29 C.F.R. 2510.3-

102, which addresses when amounts that an employer withholds from a participant's pay for contribution to a plan can reasonably be segregated from the employer's general assets, and thus become assets of the plan for certain purposes. These special rules concerning segregation of participant contributions from an employer's general assets, however, have no application to the question of whether a plan has an interest in an administrative account when plan assets are transferred to the account in support of an outstanding benefit check.[1]

Turning to an analysis of the issues presented, section 406(b)(1) of ERISA states that a fiduciary with respect to a plan shall not deal with the assets of the plan in his or her own interest or for his or her own account. Section 3(21)(A) of ERISA defines a fiduciary, in part, as one who exercises any discretionary authority with respect to the assets of a plan. As explained in 29 C.F.R. 2509.75-8, persons serving as plan trustees (and certain other plan officials) will be fiduciaries due to the very nature of their positions. Other persons will be fiduciaries to the extent that they perform any of the functions described in section 3(21)(A) of ERISA.

Accordingly, it is the view of the Department that, based on the facts described above, where a fiduciary (e.g. Trust Company) exercises discretion with regard to plan assets, its receipt of income from the "float" on benefit checks under a repurchase agreement with a national bank in connection with the investment of such plan assets would result in a transaction described in ERISA section 406(b)(1).[2]

Moreover, even if all income earned under the repurchase agreements were allocated to the plans, the repurchase agreements themselves may be prohibited where the national bank is a party in interest with respect to the plans. Section 406(a)(1)(A) and (B) of ERISA, in part, prohibit sales or extensions of credit between plans and parties in interest. The term "party in interest" is defined in section 3(14) of ERISA to include a person providing services to a plan. From the information provided, it appears that National Bank, as the custodian of plan assets for some of the plans, is a service provider to such plans.

As we understand it, repurchase agreements essentially involve debt transactions structured as sales of securities. Therefore, absent exemptive relief, it appears that the repurchase agreements in question would involve prohibited extensions of credit, as well as prohibited sales between National Bank and plans that it serves. The Department has issued an administrative exemption, Prohibited Transaction Exemption 81-8 (copy enclosed), which provides conditional relief for investments in repurchase agreements, by or on behalf of an employee benefit plan. Whether this class exemption would grant relief to the parties involved in the subject retail repurchase agreement cannot be determined from the information provided.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations

Enclosure

[1] It is commonly understood that a check does not of itself operate as an assignment of any funds in the hands of the drawee bank available for its payment and the bank is not liable on the instrument until it

accepts it. U.C.C. §3-409(1). A bank which properly pays checks drawn on it extinguishes its liability to the depositor to the extent of the amount so paid, so that it may charge the depositor's account with the amount of such payment.

9 C.J.S. Banks and Banking § 353 (1938).

[2] Although you asked if this arrangement would be prohibited under section 406(b)(3), due to the limited information provided we are unable to conclude that the arrangement described herein gives rise to a violation of this section. Specifically, we are unable to conclude that the bank knew, or should have known, the circumstances under which plan assets were invested pursuant to the repurchase agreements. Thus, we are restricting our analysis to the potential violation of section 406(b)(1).

---DISCLAIMER---

EXHIBIT 5

Field Assistance Bulletin 2002-3

Printer Friendly Version

November 5, 2002

Memorandum for: Virginia C. Smith
Director of Enforcement, Regional Directors

From: Robert J. Doyle
Director of Regulations and Interpretations

Subject: Disclosure and other Obligations Relating to "Float"

Issue

What does a fiduciary need to consider in evaluating the reasonableness of an agreement under which the service provider will be retaining "float" and what information is a service provider required to disclose to plan fiduciaries with respect to such arrangements in order to avoid engaging in a prohibited transaction?

Background

A number of financial services providers, such as banks and trust companies, acting as non-discretionary directed trustees or custodians maintain general or "omnibus" accounts to facilitate the transactions of employee benefit plans. The service provider may retain earnings ("float") resulting from the anticipated short-term investment of funds held in such accounts. Typically, these accounts hold contributions and other assets pending investment directions from plan fiduciaries. In addition, fiduciaries transfer funds to a general account of the financial institution in connection with issuance of a check to make a plan distribution or other disbursement. Funds are then held in the account earning interest until checks are presented for payment.

In Advisory Opinion 93-24A, the Department expressed the view that a trustee's exercise of discretion to earn income for its own account from the float attributable to outstanding benefit checks constitutes prohibited fiduciary self-dealing under section 406(b)(1) of ERISA. Advisory Opinion 93-24A dealt with a situation where there was no disclosure of the float to employee benefit plan customers. In a subsequent information letter to the American Bankers Association (August 11, 1994), the Department indicated that " . . . if a bank fiduciary has **openly negotiated** with an independent plan fiduciary to retain float attributable to outstanding benefit checks as part of its overall compensation, then the bank's use of the float would not be self-dealing because the bank would not be exercising its fiduciary authority or control for its own benefit. Therefore, to avoid problems, banks should, **as part of their fee negotiations, provide full and fair disclosure regarding the use of float** on outstanding benefit checks." (Emphasis supplied).

In general, the concepts of open **negotiation and full and fair disclosure**, as used in the 1994 letter, are intended to ensure that service providers provide sufficient information concerning such arrangements so that plan fiduciaries can make informed assessments concerning the prudence of the arrangements. Further, those concepts are intended to ensure that the amount of the service provider's compensation is determined and approved by a fiduciary independent of the service provider so that prohibited self-dealing is avoided.(1) Since the issuance of the letter, Field offices have found, as part of their investigations, a variety of methods by which plan fiduciaries are informed of, and or approve, the practice of plan service providers retaining float as part of their overall compensation. Typically, a service agreement will provide that, in addition to other specifically identified or scheduled fees, the service provider may also receive compensation in the form of earnings on funds awaiting investment or reinvestment or funds pending distribution. According to the investigations, however, there is little or no disclosure of specific information regarding compensation earned in the form of float.

Further guidance, therefore, has been requested concerning the obligations of plan fiduciaries and service

providers regarding float arrangements and disclosures.

Analysis

Obligations of Plan Fiduciary - In selecting a service provider, plan fiduciaries must, consistent with the requirements of section 404(a), act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. Except as provided in section 408, plan fiduciaries also have an obligation under section 406(a) not to cause the plan to engage in certain transactions, including a direct or indirect furnishing of goods, services or facilities between the plan and a party in interest. Section 408(b)(2) exempts from the prohibitions of section 406(a) any contract or reasonable arrangement with a party in interest, including a fiduciary, for office space, or legal, accounting or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.[2] In carrying out these responsibilities, the Department has indicated that a plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, such process should be designed to avoid self-dealing, conflicts of interest or other improper influence.

In circumstances where a service provider may receive compensation in the form of float, we believe the selection and monitoring process engaged in by the responsible fiduciary should include:

1. A review of comparable providers and service arrangements (e.g., quality and costs) to determine whether such providers may credit float to the provider's own account, rather than the plan.

2. A review of the circumstances under which float may be earned by the service provider. For example, in the case of float on cash awaiting investment, fiduciaries should ensure that their service agreements include time limits within which the provider will implement investment instructions following receipt of cash from the plan. Fiduciaries also should understand that delays in the plan providing investment instruction or delays in implementing investment direction by the service provider would result in increased compensation in the form of float. In the case of float on funds awaiting disbursement, fiduciaries should ensure that their service agreements specify the time at which assets are transferred from the plan to the general account (e.g., the date the check is requested, the date the check is written, or the date the check is mailed). Inasmuch as timing of mailing or distribution of a check may also affect the amount of float, service agreements should provide, if relevant, an indication as to when checks are mailed following a direction to distribute funds. Fiduciaries also should understand that float will be earned on such disbursements until checks are presented for payment by the payee, the timing of which is beyond the control of the plan and service provider. In this regard, fiduciaries should review periodic statements or reports of distribution checks to determine the extent to which checks tend to remain outstanding for unusually long periods of time (e.g., 90 or more days).

3. A review of sufficient information to enable the plan fiduciary to evaluate the float as part of the total compensation to be paid for the services to be rendered under the agreement. In this regard, fiduciaries should request and review the rates the provider generally expects to earn. For example, the provider might indicate that earnings on uncashed checks are generally at money market interest rates. Given the uncertainties with respect to both actual interest rates and the length of the periods during which any given funds may be pending investment or pending disbursement, it is anticipated that any projections by the fiduciary will result in only a rough approximation of the potential float. However, the information on which the approximation is based (e.g., basis for earnings rates and agreement terms relating to maximum periods within which funds will be invested following investment direction, timing of transfers of cash from the plan to the provider's general account following direction to distribute funds, period for mailing checks, extent to which experience shows that distribution checks remain outstanding for unusually long periods of time, etc.) and the approximation itself, will enable a fiduciary both to compare service provider float practices and assess the extent to which float is a significant component of the overall compensation arrangement.

Additionally, a plan fiduciary must periodically monitor compliance by the service provider with the terms of the agreement and the reasonableness of compensation under the agreement in order to ensure continuation of the agreement meets the requirements of sections 404(a)(1), 406 and 408(b)(2).

Obligations of Service Providers - The primary issue for service providers with float arrangements is whether the provider has disclosed to its employee benefit plan customers sufficient information

concerning the administration of its accounts holding float so that the customer can reasonably approve the arrangement based on an understanding of the service provider's compensation. Moreover, the arrangement must not permit the service provider to affect the amount of its compensation in violation of section 406(b)(1) (e.g., by giving the service provider broad discretion over the duration of the float). For example, even where a service provider discloses in its service agreement that additional compensation may be paid to the service provider as a result of float, a prohibited transaction may nonetheless result to the extent that the service provider exercises discretionary authority or control sufficient to cause a plan to pay additional fees to the provider. As noted in Advisory Opinion 93-24A, a fiduciary's decision to handle plan assets in such a way as to benefit itself constitutes prohibited self-dealing, without regard to the status of the funds after they are placed in a disbursement or other account.

It is the view of this Office that, in connection with a service agreement pursuant to which the service provider may be retaining float as part of its compensation, the service provider can avoid self-dealing with respect to such earnings by taking the following steps:

1. Disclose the specific circumstances under which float will be earned and retained.

2. In the case of float on contributions pending investment direction, establish, disclose and adhere to specific time frames within which cash pending investment direction will be invested following direction from the plan fiduciary, as well as any exceptions that might apply.

3. In the case of float on distributions, disclose when the float period commences (e.g., the date check is requested, the date the check is written, the date the check is mailed) and ends (the date on which the check is presented for payment). Also disclose, and adhere to, time frames for mailing and any other administrative practices that might affect the duration of the float period.

4. Disclose the rate of the float or the specific manner in which such rate will be determined. For example, earnings on cash pending investment and earnings on uncashed checks are generally at a money market interest rate.

We note that the disclosure of and adherence to the foregoing by service providers will not only reduce the likelihood of prohibited self-dealing, but also will assist plan fiduciaries in discharging their obligations under sections 404(a)(1), 406 and 408(b)(2).

Conclusion

Float should be regarded by plan fiduciaries and service providers as part of the service provider's compensation for services to the plan. As such, the plan fiduciary must have an adequate understanding of how the service provider will earn float, and how it contributes to the service provider's compensation. The service provider must make disclosures sufficient to permit the fiduciary to make an informed decision regarding the proposed float arrangement. In addition, to avoid having the arrangement give rise to self-dealing violations of section 406(b), both parties must avoid giving the service provider discretion to affect the amount of compensation it receives from float.

Questions concerning this matter may be directed to Louis Campagna or Fred Wong, Division of Fiduciary Interpretations at 202.693.8510.

Footnotes

1. What constitutes an approval by an appropriate plan fiduciary will depend on the facts and circumstances of each case. See Advisory Opinion Nos. 97-16A and 2001-02A.

2. As interpreted by the Department, section 408(b)(2) exempts from the prohibitions of section 406(a) payment by a plan to a party in interest, including a fiduciary, for any service (or combination of services) if (1) such service is necessary for the establishment or operation of the plan; (2) such service is furnished under a contract or arrangement which is reasonable; (3) no more than reasonable compensation is paid for such service. However, section 408(b)(2) does not provide an exemption for an act described in section 406(b) of ERISA, even if such act occurs in connection

with a provision of services that is exempt under section 408(b)(2). See 29 C.F.R. § 2550.408b-2.

EXHIBIT 6

Advice Company Publications

ADVICE & COUNSEL
NEWSLETTER

What is the *Advice & Counsel Newsletter*?

For over 10 years ***Advice & Counsel Newsletter*** has been the leader in publications targeted to recent beneficiaries of life insurance and annuity proceeds. It is distributed each month to tens of thousands of beneficiaries. The newsletters usually accompany the monthly statements that insurance companies send to their beneficiaries who have been paid through their Retained Assets Accounts.

The ***Advice & Counsel Newsletter*** was developed by the inventor of the Retained Asset Account and is published by him a team of experienced counselors and editors in a highly readable manner that resonates with beneficiaries.

Why a Targeted Newsletter?

Decades of experience, backed by focus group and other research conducted by the publisher and others has shown that beneficiaries frequently are pressured — more quickly than they are comfortable with — by family and friends into taking highly inappropriate action with their proceeds. Too often such actions wind up wasting all or large portions of their insurance proceeds.

There are countless tales of beneficiaries who received a significant amount of proceeds, that could have protected their financial security for decades, who instead succumbed to subtle and not so subtle pressures, guilt, fear and/or greed and wound up "investing" the proceeds in risky and inappropriate securities and schemes, and wasting, inappropriately spending, and gifting away their inheritance, severely damaging them financially.

The best financial advice generations of counselors have given beneficiaries after a death is to do nothing with their money for a while, at least until they have regained their equilibrium. Well intentioned counselors and clergy strongly caution beneficiaries to take their time making important decisions, to avoid risk, and against taking precipitous action in all aspects of their lives.

The ***Advice & Counsel Newsletter*** strongly concurs with this almost universal advice, and in every issue helps beneficiaries understand why it makes sense to delay non-essential decisions, to avoid inappropriate risk, and to take time to decide what to do with the life insurance and annuity proceeds. It reinforces how the Retained Asset Account safeguards their funds for as long as they like, has paid and will continue to pay competitive rates, involves no monthly fees or similar costs, provides convenient access to the proceeds, and keeps them in control of their own money.

The ***Advice & Counsel Newsletter*** also generally highlights at least one benefit of their Retained Asset Account, which helps beneficiaries in so many ways, by providing them with insurance company guaranteed safety of principal, competitive interest rates, access to and control over their proceeds, and enables them to take the time to decide.

From an insurance company's point of view, this helps extend the duration of the accounts, enabling the insurance company to earn a spread on the proceeds, while paying the beneficiary a highly competitive rate – and often a rate far higher than they could earn with any other savings vehicle offering similar degrees of safety, access and control.

Advice Company Publications

The ***Advice and Counsel Newsletter*** is truly not an "expense." Each and every copy helps add to your company's bottom line, by extending account duration.

The ***Advice & Counsel Newsletter*** reinforces the value of your account, the reliability of your company, and the quality of its service. Most significantly, it explains to beneficiaries and their families why they should take time to decide, and avoid rushing into investment and other important decisions, such as how to invest their insurance proceeds, at a time of great emotional turmoil.

The ***Advice & Counsel Newsletter*** has repeatedly been shown to extend account duration -- significantly.

The average marginal gain a company realizes (based on the average of all company account balances and the average investment spread earned) is over $4.00 for each extra day an account remains on the books. That's a fraction of the cost of providing 12 issues of the ***Advice & Counsel Newsletter*** to your beneficiaries -- one each month for an entire year!

The cost of each issue, including full customization, is very reasonable -- usually far less than what it would cost your company to do the printing alone -- and we provide discounts as quantities increase. And if you ask any of our clients, we're sure they'll tell you we're a lot more responsive, and easier to deal with than most internal corporate communications departments, and we handle legal compliance too.

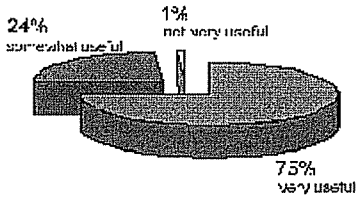
Call us for the latest pricing information:

415-331-1212 ext 234

Advice Company Publications

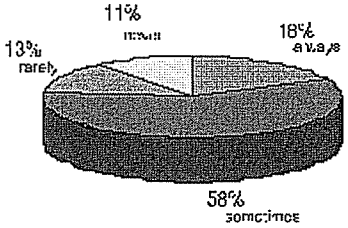
Advice & Counsel Newsletter Survey of 5,000 beneficiaries (600+ responses)

I find the free Advice & Counsel Newsletter with my statements from my insurance company:



- 99% of the readers found the Newsletter useful
- Of the total, 75% said it is "very useful"; 24% said "somewhat useful"

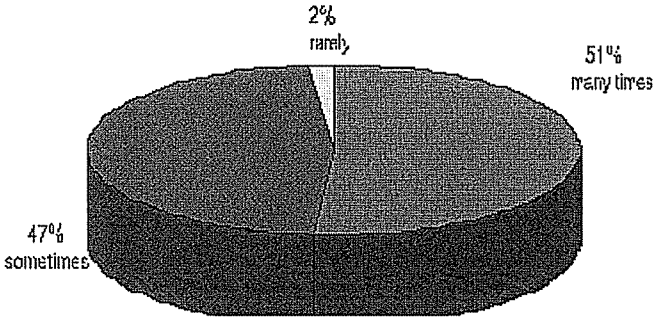
I share my newsletter with friends, colleagues or family members:



That 76% say they share their newsletters is significant because:

- Each issue highlights the value of their accounts which helps extend duration.
- It creates goodwill beyond the Beneficiary population for companies providing the Newsletters, as people share the information with others.
- It gives Beneficiaries ammunition to defend against pressure from others to move money from their Retained Asset Accounts.

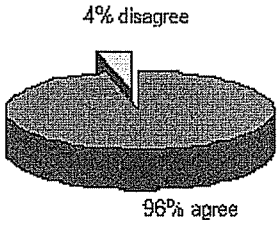
I take into consideration information and suggestions which I have read in the newsletter:



That Beneficiaries take into consideration information in the Newsletter is important because our suggestions are geared towards extending duration of accounts:

- Each issue cautions Beneficiaries to take their time when making any financial decisions. This enhances the inertia that Beneficiaries normally experience and helps your company retain the proceeds.
- We point out unexpected risks in typical actions that may reduce account balances, such as lending money to family and friends, paying off mortgages early, etc.
- We explain the advantages of keeping insurance proceeds in Retained Asset Accounts separate from ordinary household, savings and investment accounts.
- We present the latest scams and cons, and advise readers on how not to get taken.

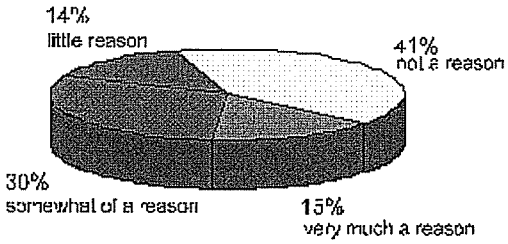
Receiving the *Advice & Counsel Newsletter* makes me feel better about the insurance company which provides it to me:



A resounding 96% agreed that the Newsletter makes them feel better about their insurance company.

- There is no better reference for an insurance company than a satisfied Beneficiary.
- With so much negative press about insurance companies in general, this is a welcome change in attitude.
- We offer clients the opportunity to customize their Newsletters by adding their corporate logo and communicating information about their company's products and services to Beneficiaries.

The free newsletter subscription and its advice is one of the reasons I maintain my account with my insurance company:



Probably the most significant question of all which we asked.

Obviously, people keep their accounts open for a variety of reasons. Of the readers who responded to our survey, 59% said that the ***Advice & Counsel Newsletter*** is one of these reasons.

Duration is a key to profitability of your program. Our Newsletters help keep your accounts open longer because our advice in every issue is the very best we can offer to the average new beneficiary and it is also consistent with your company's objective of extending account duration.

Industry averages show that the typical new account generates a profit of $2.14 a day -- every day for each account holder! That's a pretax net profit of $780 annually on each account. Retaining these accounts is critical to real success with your Retained Asset Account program.

If you have 2,000 Beneficiaries in your retained asset account, and just the 15% who said it had a significant impact on their keeping the account open did maintain their account levels for another six months, (using industry averages on a new $39,000 Retained Asset Account earning a spead of 2%), your company would generate a $115,560 pre-tax profit. This does not even take into consideration the other 44% who said that the Newsletter is a factor in keeping their accounts open.

The publisher of the *Advice & Counsel Newsletter* invented the Retained Asset Account concept while at MetLife ® which he trademarked as the Total Control Account® He began using newsletters in MetLife's account statements in 1984. Some of those very first retained asset accounts are still open today.

Methodology Used in Survey

State Street Bank randomly inserted a total of 5,100 questionnaires on a Business Reply Card in the monthly statements sent by eight insurance companies to their Retained Asset Account customers. Six of the eight insurance companies whose beneficiaries were surveyed distributed the Advice & Counsel Newsletters to beneficiaries on a monthly basis, and the remaining two sent the Newsletter every other month.

The insertions were made to a cross-section of each company's accounts, without regard to the length of time the account had been open, the current account balance, the address of the Beneficiary, or any alphabetical or geographical sorting.

At least 10% of all Beneficiaries with Retained Asset Accounts were surveyed at each company. Over 600 responses were received, in total. The Advice & Counsel Newsletter made a modest charitable contribution to a named charity for each survey received back. A 12% response rate is considered high for a written survey where the respondents were not personally compensated.

There was a high statistical correlation among the responses received from all eight companies surveyed.

Beneficiaries of the companies that subscribed to the Newsletter on a monthly basis returned a higher percentage of surveys, and expressed a more favorable reaction to the Newsletter and their insurance companies, than those at the two companies where Beneficiaries received the Newsletter every other month.

In our opinion, it is critical to build loyalty among Beneficiaries as soon as the account is opened. The Newsletter helps to foster this loyalty every month, starting with the first statement. When newsletters are sent bimonthly, 50% of new Beneficiaries do not receive an issue until the second month the account is opened. By this time, opinions are formed about the insurance company and the account, so the chance to influence the readers is lessened.

Comments from Respondents

We asked readers to: "Please feel free to make any suggestions on enhancing or improving the newsletter." Here are some of the responses.

"One of the best newsletters I've received."
"I truly look forward to receiving (it)."
"Needs no further improvement. I love it!"
"Many timely tips and good advice."
"Very thoughtful!"
"I am quite pleased with the information."
"Articles of common interest to middle class."
"I love it. I need it. Thanks for it."
"Simply stated, the newsletter is excellent!"

"I read all of it and find it helpful."
"Keep it coming. I enjoy it very much."
"I always find new information. It is great. Thank you."
"Keep up the good work."
"Thank you for senior/widow information."
"I keep each issue."
"It has very useful information for me."
"Very good. I read it (as a) sort-of 'support system'."
"Great job!"
"Continue sending. I need the advice on legal matters."
"I look forward to receiving (it) very much."
"A very thoughtful 'gift' in this day and time'."