2012 ERISA Advisory Council

Current Challenges and Best Practices Concerning Beneficiary Designations in Retirement and Life Insurance Plans

Issue Chair: **Mary Ellen Signorille**
Issue Vice Chair: **Ralph Derbyshire**
Drafting Team: **Marilee Lau and Neal Schelberg**

Description

Beneficiary designations are frequently used in retirement and life insurance plans to determine entitlement to benefits payable upon death of the participant. In the case of certain benefits subject to spousal protections, ERISA imposes requirements on both the form and timing of beneficiary designations. Other types of beneficiary designations are a matter of plan design. The complexity of the rules under ERISA may, in some cases, lead to beneficiary designations that do not accurately reflect the participant's intent, and can frequently result in disputes over who is entitled to ERISA plan benefits following the death of the participant. The following are among various instances where such disputes commonly arise:

- Participants fail to change beneficiary designations to reflect life events. The most common and frequently contentious disputes occur where spouses marry or divorce but fail to update their beneficiary designations to reflect this change of status before their death. In these cases, failure to act can result in clashes between the participant's spouse, ex-spouse, and other potential beneficiaries including, among others, parents, children or other siblings.

- There have been cases where the beneficiary allegedly murders the participant. Some state laws, so-called "slayer statutes", prevent the designated beneficiary who is the wrongdoer from receiving the proceeds. In such instances, questions may arise concerning whether ERISA will preempt these state statutes.

- In instances of simultaneous death of the participant and the designated beneficiary, questions can arise concerning the impact of survivorship rules on the receipt of benefits. In addition, the impact of state laws on these questions is unclear.

- Where the plan has lost the beneficiary designation or has stale designations because of a change in service providers, administrators or other reasons, benefits under the plan may not flow to the intended beneficiary.

- There may also be instances where the elected beneficiary designation is impermissible under the terms of the plan, thereby resulting in questions as to whom the benefit should be paid under the terms of the plan.

In cases where benefit disputes occur, including those listed above, plan fiduciaries are required to spend time, financial and other resources to identify the correct beneficiary in order to fulfill their fiduciary duties. The actions the fiduciaries are forced to take can range from defense of lawsuits, interpleader actions in court, or time and financial resources spent by personnel in order to locate the correct beneficiary designation and to avoid payment to an erroneous beneficiary. Such payment could expose the plan and its fiduciaries to liability. In addition, the plan may be placed in the unfortunate position of having to pay the same benefit twice — once to the mistaken beneficiary and then to the correct beneficiary. In the case of a double payment, the plan may be forced to seek recovery of the erroneous benefit payment. However, under current case law such recovery may be difficult or in some cases impossible.

In addition to concerns over the proper disposition of benefits, beneficiary designations present unique administrative challenges. Because of legal requirements and historical practices, the beneficiary designation is one of the few employee benefit transactions that remain almost entirely paper-based. This creates significant challenges for both plan sponsors and service providers who are focused on meeting the needs of participants. Beneficiary designations also have a "life" that is much longer than the typical election made by participants under their benefit plans. A beneficiary election can remain on file for decades without review by the participant which increases the likelihood that the original designation may not reflect the current intent of the participant.

Participants may be unaware of when they should consider changing their beneficiary designation(s) and/or the steps that they must take in order to make these changes. In addition to the retirement plans and service providers under these plans, estate planners and family and elder care lawyers could be helpful in explaining the necessity of these changes as well as importance of keeping the designated beneficiary updated to reflect their current intent.

Finally, even when the beneficiary designation correctly indicates the participant's intent, beneficiaries may be unaware of what to do to obtain the benefit or to determine the benefit to which they are entitled.

Objective and Scope

The Council is examining this topic and intends to draft recommendations to the Secretary of Labor for consideration. Our study will focus on:

A. The scope of preemption of state laws that impact beneficiary designations and powers of attorneys. The subjects of these state laws include, but are not limited to, revocation upon divorce, community property laws, slayer statutes, survivorship determination in cases of simultaneous death, and the doctrine of substantial compliance.

B. The interrelationship of spousal consent and beneficiary designations, including lost or missing spouses, impact of qualified domestic relations orders on spouse's rights, and impact of prenuptial agreements.

C. The responsibility, if any, of plans and service providers to notify participants of the ability or necessity to update beneficiary designations due to life changes, a change in service provider for the plan, or regulatory changes.

D. A review of current plan and service provider practices to deal with issues surrounding beneficiary designations including types of plan provisions, techniques for locating beneficiaries, how plans find and locate the designations, procedures for updating beneficiary designations and differences, if any, depending upon the type of plan; and types of notification(s), if any, to participants.

E. Methods for resolving disputes over beneficiary designations, including consideration of current practices in utilizing a plan's claims review procedure.