Written Comments Submitted to the U.S. Department of Labor Advisory Council on Employee Welfare and Pension Benefit Plans

On behalf of the National Coordinating Committee for Multiemployer Plans (NCCMP)

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

Thank you for this opportunity to provide comments on the topic Current Challenges and Best Practices concerning Beneficiary Designations in Retirement and Life Insurance Plans.

My name is Joyce A. Mader and I am appearing today on behalf of the National Coordinating Committee for Multiemployer Plans (NCCMP). The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately 26 million workers, retirees, and their families who rely on multiemployer plans for health, retirement and other benefits. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service and trucking industries.

This issue before the Advisory Council struck a responsive chord with NCCMP affiliates. Similar to other organizations that have appeared before you on behalf of their members, the NCCMP sent your questions to its affiliates for their input. We have received written and verbal responses to all or some of the questions from a number of affiliates including several plan counsel and third party administrators (TPAs) whose responses represent the practices of many of their clients. Several of the plans that responded are national in scope with thousands of participants. The responding counsel and TPAs have clients that are national or large regional plans. Therefore, the responses NCCMP received represent many more participants that the summary of the responses attached would seem to indicate.

I, personally, have been representing multiemployer plans, and a few single employer plans, since I commenced the practice of law in 1976. My law firm represents well over 100 plans including defined benefit pension plans, individual account plans of all varieties (money purchase, profit-sharing and some including a 401(k) feature), health and welfare plans (predominantly self-insured, vacation plans and security benefit plans all of which typically provide some form of benefit to a beneficiary upon the death of a participant. The plans my firm represents include several large national pension and health and welfare funds as well as regional funds and small localized funds. NCCMP affiliates include the largest multiemployer plans.

Although the administrative functions of some smaller multiemployer plans may be performed by a TPA, most moderate sized funds have their own staff. The Board of Trustees composed of an equal number of labor- and management-designated trustees is both the sponsor[1] and the administrator[2]. The employers of participants pay contributions and maintain a record of hours (or other units of time) employees have worked for them but typically have little or no other administrative responsibilities. It has been my experience, that multiemployer plans may assume significant responsibility for service to participants in various ways. This may include providing more communications than required by law and providing follow up on issues such as beneficiary designations as a service to members. Many of the responding plans review beneficiary designations as they are submitted and promptly contact participants to resolve any problems.

Attached to these comments are documents consisting of two sets of questions with summaries of responses NCCMP has received. These documents are designated "Responses of NCCMP Affiliates to Sample Witness Questions" and "Responses of NCCMP Affiliates to Supplemental Questions Involving Beneficiary Designations". The responses include sample plan provisions that were submitted with the responses. I will discuss these in more detail in response to the specific topics of the Sample Witness Questions.

Use of Beneficiary Designations

There are a variety of multiemployer plans that may provide benefits that may be paid pursuant to a beneficiary designation.

Defined benefit pension plans are still the most common form of retirement benefit for multiemployer plan participants. These plans, of course, provide a qualified joint and survivor annuity as the automatic payment form for a married participant. A married participant may, however, with spousal consent, waiver the joint and survivor annuity, and elect other available payment forms which may include forms with a period certain benefit (typically 5- or 10-year) the balance if which will be paid if the participant dies before the guaranteed period of payments have been made. A defined benefit plan may also provide for a lump sum pre-retirement and/or post-retirement death benefit. There may be a return of contribution benefit for participants who do not vest in the lifetime pension benefit. Finally, for those few multiemployer defined benefit pension plans that include a participant contribution, that portion of the benefit might be payable pursuant to a beneficiary designation.

Defined contribution pension plans may include money purchase plans and profit-sharing plans with and without 401(k) features. Money purchase plans and those profit-sharing plans that were established initially as money purchase plans must provide a qualified joint and survivor annuity as the automatic for m based at least on the money purchase portion of the account. Upon the death of the participant, either the entire account (in the case of profit-sharing/401(k) plans without a survivor annuity) or 50% of the account (in the case of money purchase plans) must provide a benefit to the spouse. If the participant is not

[1] ERISA §3(16)(B)
[2] ERISA §3(16)(A)

married or a portion of the account is not committed to the spousal benefit, the beneficiary designation will control that portion of the account.

Multiemployer health plans typically provide life and accidental death and dismemberment (AD&D) benefits. The AD&D benefits are usually insured. The life benefits are often insured but may also be self-insured. Multiemployer health plans are more often than not self-insured.

Other types of multiemployer welfare benefit plans may also pay a benefit pursuant to a beneficiary designation upon the death of the participant such as a vacation benefit plan (individual account), supplemental unemployment benefit (SUB) plan, security benefit plan (individual account).

Depending on the benefits offered that may be paid pursuant to a beneficiary designation, the percentage of participants that complete a beneficiary designation may be quite small or quite large. For example, one responding defined benefit pension plan noted that it only paid a period certain benefit pursuant to a beneficiary designation. Since few participants elected this benefit form, few completed beneficiary designations. Health plans with life and AD&D benefits and defined contribution plans reported that it was typical for participants to complete a beneficiary designation or that the vast majority of participants completed a designation. Most of the responding plans do not share beneficiary designations although it was noted that a beneficiary designated by a related plan may be part of a plan's default beneficiary provision.

None of the responding plans felt that the practices regarding use of beneficiary designations varied by size of plan.

Plan Document and Form Issues

Each responding plan has a default provision and they are similar to each other and to the default provisions described by other witnesses. Responding plans found these provisions helpful. A number of plans provided the text of the plan provision which is included with the attachments. The most common order after the designated beneficiary is current spouse, children, parents, siblings, estate. As noted above, some plans included the beneficiary designated for purposes of a specified related plan.

Some of the plans stated that they would honor a beneficiary designation received before the death of the Participant if the beneficiary's name is clear and the designation is signed by the participant. However, other plans stated that they would not accept any designation with errors or omissions. So long as designations are reviewed to promptly catch these errors, this policy may have limited impact. None of the plans would accept a designation using a document other than the plan's form.

Most responding plans stated that beneficiary claims were subject to the plan's claims/appeals procedure although some plans noted that that no appeal had ever been filed.

All of the plans responded that the plan required a specific form of beneficiary designation. Only one plan felt that a model template would be helpful.

The plans were divided whether plan documents should provide that beneficiary designations naming a former spouse are automatically revoked in the case of divorce. (See responses to Sample Questions as well as Supplemental Questions.) One group of national plans commented that they would be unable to determine if participants were divorced and that they currently have problems with participants not reporting divorces. The Health plan has a number of collection cases against participants who did not advise the plan of a divorce and whose former spouse incurred large medical claims after the divorce. This has been an ongoing problem. Instead, the plans specify that beneficiary designations of a former spouse are NOT revoked by divorce and that the designation on file remains valid. Participants are frequently reminded of this rule and are urged to update beneficiary designations. None of these related plans have been challenged concerning this rule.

Most of the responding plans permitted a change in beneficiary designation pursuant to a power of attorney valid under the applicable state law.

Service Provider Issues

Several of these issues did not apply to the multiemployer plans. Multiemployer plan are maintained by a TPA or, more often by employees of the plan or a group of related plans. The TPA/Fund Office is responsible for interpreting a beneficiary designation initially but the Board of Trustees will make a determination on appeal. None of the plans had ever determined a separate cost for maintaining beneficiary designations.

Keeping Beneficiary Designations Up-to-Date

None of the responding plans have re-solicited beneficiary designations. Only one plan automatically informed participants of their current beneficiary designations. This national defined benefit plan included this information on participants' annual statements. All of the other responding plans provided the information upon request. One health plan made the information accessible online in the participant's secure record.

Most of the plans reminded participants to update beneficiary designations. Some are more aggressive in this regard than others. The practices varied substantially and may have been tailored to the size and geographic diversity of the plan and the nature of the industry covered by the plan. All plans make it easy to change a beneficiary designation.

Many of the plans review beneficiary designations as they are submitted to make certain that the designations are properly completed. Problems are identified and resolved at that time. Other plans review designations at retirement or other termination of employment. The timing of review may be determined somewhat by the nature of the benefits that may be paid pursuant to a beneficiary designation.

Identifying and Locating Beneficiaries

Since most of the plans review beneficiary designations as they are submitted it is unlikely that a generic beneficiary designation as described (e.g., "my children") would be in effect when the participant died. If such a designation was in effect, the plans indicated that they would get in touch with known contacts to determine and attempt to locate the remaining relatives. Plans also use internet search services.

Plans reported that they use commercial search services to locate missing beneficiaries when their own efforts have not been fruitful. The plans pay the costs of these efforts.

If plans are unable to locate a missing beneficiary, they typically hold the benefit if it is not known that the missing beneficiary is dead, or pay the benefit to the next beneficiary in line including the Participant's estate.

Beneficiary Disputes

All of the plans responded that beneficiary disputes are extremely rare, or not applicable. Since such disputes are rare many of the plans did not identify the most common dispute. The following were identified by at least one plan: "ex-spouse seeking benefit", "change of beneficiary close to time of death", "slayer statute matter", "action by guardians of child of participant who had relinquished parental rights." Plans typically hold the disputed benefit until the dispute is resolved. One plan noted that pension benefits cannot be held too long without possibly running afoul of the IRS required distribution rules.

Interestingly, most of these plans do not interplead benefit disputes but make the decision at the plan level. The parties can then either appeal or sue. One plan stated that it has used interpleader for larger benefit amounts. One plan counsel submitted plan language (attached) that provides a plan-based slayer provision. The costs of a benefit dispute are typically paid by the plan unless an interpleader is filed and the costs are deducted from the benefit.

Issues regarding QJSA/QPSA's, Spousal Waivers and QDRO's

Pre–age 35 QPSA designations are not an issue for the responding plans. Multiemployer plans rarely include this provision choosing instead to use an alternative to subsidize the QPSA and not permit an opt out.

The pension plans reported that they would follow a post–death QDRO in accordance with DOL Regulations although most had not yet received one.

In response to the Supplemental Question regarding how a plan responds if a domestic relations order (DRO) includes a purported beneficiary designation, most plans provided some variation of "it depends". Therefore, if the beneficiary designation is the designation of the former spouse as the surviving spouse, this would be accepted. However, if the designation was the designation of purported beneficiaries of the Alternate Payee's interest in the event he/she predeceases the Participant, this would not be accepted.

State Law Issues

Most of the plans reported that they typically treat state law as preempted and that guidance from DOL on this issue is not required. Most of the plans had no experience with state probate issues or small estates. One administrator advised that benefits are typically paid to beneficiaries and not to the estate.

Conclusion

Your inquiry has provided the impetus to explore an important subject. Those of us in the multiemployer community have used this project an opportunity to exchange ideas and to learn from each other's experiences. We also look forward to the contribution that the Advisory Council's efforts will make.

In the final analysis, it is the view of the NCCMP on behalf of its affiliates that the responsible plan fiduciaries, the Board of Trustees, are in the best position to determine the plan rules that should govern beneficiary designations for a specific multiemployer plan. The Trustees make this determination with intimate knowledge of the needs and capabilities of the participants and beneficiaries covered by the plan taking into account the administrative challenges resulting from the size, geographic diversity and industries of the plan. One standard rule would not suit all plans. The appropriateness of the rules currently in place is evidenced by the extremely low number of disputes involving beneficiary designation reported by the responding plans.

We thank you for this opportunity to participate and to share the views of the multiemployer community.