

ERISA Advisory Council

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

Safe Harbor Standard for Beneficiary Designations June 14, 2012, 10:15am

Introduction of speaker

Good morning Madame Chairwoman and members of the Council. My name is Kathy Callaghan. I am the Senior Manager in MetLife's Group Life Products unit, the business area responsible for group life, accidental death and dismemberment, and business travel accident products. I am here today to testify on behalf of MetLife. MetLife is a leading provider of most major employee benefits and has been committed to this business for nearly 100 years.

We welcome the opportunity to be part of this hearing today and appreciate your inviting us to testify. We believe that the Council's work is critical in establishing a best practices model for beneficiary designations, a vital component of retirement and life insurance plans.

Introduction of topic and goal of testimony

A beneficiary designation is one of the most important documents a participant will execute, one that may not be acted on for decades following its completion. Plan participants and their beneficiaries place their trust in the custodians of these vital records to solicit and maintain them such that the stated intentions are carried out, and providers pay benefits to the intended parties.

In today's benefits environment, plan sponsors face a number of practical challenges with respect to administering the beneficiary designations their plan participants make across numerous types of benefits. Among these, they must balance the need to maintain records over a long period of time against technological innovations that offer streamlined recordkeeping solutions, but may not encompass maintenance of paper records for those without access to technology. Multiple benefit providers using varied forms and recordkeeping platforms, along with plan participants who do not always review designations following major life events all add up to a challenging environment for plan sponsors. The goal of our testimony today is to offer suggestions for a safe harbor standard designed to ensure the prompt and efficient payment of benefits to the proper beneficiaries and, if so followed, would provide adequate protection to plan sponsors, recordkeepers and other plan providers in the administration of such vital records. Further, if a problem arises with a designation, such safe harbor standard could

encourage the problem to be addressed when the participant is alive and competent to correct the matter, rather than at the point of claim.

Challenges to Plan Sponsors

In the early years of employee retirement and benefit plans, records were typically maintained by the plan sponsor, with dedicated benefits administration staffs. Benefits were generally provided by a smaller number of providers, and in many cases, one multi-line carrier may have insured all of the retirement and health and welfare plans. In today's employee benefits environment, plan sponsors must contend with a wide number of insurance and service providers, recordkeeping platforms and plan rules, both based on statute or contract. The availability of dedicated benefits administration staff employed by the plan sponsor has diminished over time, as maintaining such staffing can be cost-prohibitive for the plan. Over time, the number of providers utilized by plan sponsors has increased, each with their own forms and processes, presenting additional challenges for plan sponsors.

Depending on plan size, electronic recordkeeping systems may be a solution that maintains all records in one location, and provides a single point of entry for participants. However, such applications may be cost-prohibitive for smaller plans. Each plan document may set forth different rules for beneficiary selection, procedures for naming and changing beneficiaries, and may be subject to state or Federal law. For example,

under a 401(k) plan, a married participant must obtain a spousal waiver in order to name an alternate beneficiary. This same participant would not be similarly obligated if covered under a group life insurance policy, which generally permits beneficiaries to be named and changed at will. Further, in a small number of states, under state law, spousal beneficiary designations are revoked upon divorce. Adding to the complexity of plan administration, such laws are pre-empted by ERISA, provided that the benefit plan involved is an ERISA plan.

Consequences for Beneficiaries, Plan Sponsors and Recordkeepers

In addition to the various changes in plan benefits, providers, and recordkeeping systems, there is also the human element—a plan participant who experiences a life event and fails to take action with respect to beneficiary designations, or fails to complete the forms such that they may be recorded. Consequences for inaction at the time of life events or incomplete designations may result in one of the following:

- Proceeds are paid to an ex-spouse instead of the current spouse.
- Proceeds are paid to parents instead of to the spouse or children.
- Proceeds are paid to the estate, incurring costs for probate and possible greater exposure to potential estate tax liability.

- Potential payees must go to court pursuant to an interpleader action to establish the correct payee.
- Delay and expense to locate missing beneficiaries or identify class members if the designation is not specific.

Safe Harbor Standard

MetLife suggests that the Department of Labor adopt a safe harbor standard that offers fiduciary liability protection to plan sponsors, plan administrators, and plan recordkeepers with respect to beneficiary determinations. For purposes of claims processing, the courts have held that if a plan so provides, a plan administrator's fiduciary determination is entitled to a presumption of deference (and will not be subject to *de novo* review) provided that the determination is not arbitrary or capricious. Safe harbor standards could describe administrative practices and procedures for paying benefits to beneficiaries that, if such standards were followed, would not be deemed to be arbitrary or capricious in the view of the Department of Labor. Ultimately, such safe harbor standards will benefit the plan participant and beneficiary by ensuring that the intent of the participant is realized, which is the goal of both plan sponsors and their service providers.

In the course of administering beneficiary designations and death benefit claims, issues can arise that require actions to be taken by the recordkeeper

that may be seen as fiduciary in nature. It would be beneficial to beneficiaries, plan administrators, plan recordkeepers and other plan vendors if safe harbor standards were available setting forth the steps to follow for these situations. This is particularly true in the case of abandoned plans where the employer and plan administrator are not available to make such decisions. Therefore, MetLife proposes that safe harbor standards be adopted for paying death benefits that will provide the administrative steps to follow and also limit or eliminate fiduciary liability. These procedures could address the following:

- Obtaining and updating beneficiary designations.
- Identifying deceased participants.
- Identifying and locating beneficiaries.
- Paying beneficiary claims or escheating death benefits.

Identifying and Locating Beneficiaries. It is worth noting that many states are pursuing similar beneficiary claim initiatives with respect to non-ERISA accounts held by insurance companies. Some of these state initiatives provide guidance regarding what may be appropriate for use as safe harbor procedures under ERISA. For example, the New York Superintendent of Financial Services has recently issued regulations defining standards for identifying deceased participants, locating beneficiaries, investigating beneficiary claims and promptly paying benefits.

Beneficiary Designation Form Content. The safe harbor standard could also prescribe content standards for beneficiary designation forms to include specific references to plan name/number, specific plan benefit, full beneficiary name, address, date of birth, relationship, and social security number (SSN). Sample language could be provided describing the general consequences for failure to properly designate beneficiaries and provide for user-friendly instructions highlighting critical content and common reasons why forms are returned for correction/completion, such as missing signatures.

Life Event Checklist for Plan Sponsors and Recordkeepers. The safe harbor standards could provide that periodically or when a life event is reported, participants would receive (whether requested or not) a beneficiary designation form or forms that, if properly completed and returned, would replace previous beneficiary directions. This could encourage plan sponsors and their providers to develop and use automated systems that at the outset of each customer service call or web contact, spoken reminders or a pop-up information box would be provided on beneficiary designations. In addition, safe harbor standards could provide that spousal designations would be automatically revoked upon completion of divorce proceedings. This would need to be reconciled with ERISA's

QDRO provisions, which most Federal courts have ruled apply to both health and welfare plans.

Recordkeepers. Recordkeepers could be encouraged to image or transcribe paper records into an electronic recordkeeping system so all records are maintained in one system. When adopting an electronic recordkeeping system, paper forms could be transcribed and a telephonic option provided for participants without internet access. Under the telephonic option, which can be popular among retiree groups, participants call a toll-free number and speak to a customer service representative, who transcribes the spoken designation into an electronic recordkeeping system, followed up with a paper confirmation to the participant to ensure correct transcription. In addition, telephonic and web enrollment sites could be enhanced to require a designation be entered in order to complete any transaction. While certain of these systems could potentially increase plan expenses, and availability may be limited for smaller employers, a safe harbor could provide standard procedures to ensure that recordkeepers review incoming designations for accuracy, clarity, and adherence to plan rules, and when a plan sponsor changes recordkeepers, the safe harbor standard could encourage these approaches by addressing the need to maintain beneficiary integrity, provide clear instructions for notification of death by families and describe designation form content and usage

Adopt Uniform Plan Provisions Across Plans and Modify Summary

Plan Description and Related Policy Documents

MetLife also suggests a Uniform Facility of Payment Provision, under which all benefits provided by single plan sponsor could use common provisions within each plan document and contract whereby if there is no living beneficiary at the time of death, proceeds will be payable to the participant's spouse/partner, children, parents, sibling and estate in that order of precedence. The participant's estate should be the beneficiary when all potential payees have been exhausted, to minimize probate and other costs.

Conclusion

Thank you for this opportunity to speak before you today. We believe that a safe harbor standard can be designed that will benefit plan participants and beneficiaries by encouraging plan sponsors and plan recordkeepers to administer beneficiary designations to reflect participants' intent and pay benefits to such beneficiaries in a prompt and efficient manner. Such standards will assist providers such as MetLife in delivering on the promise we made. We look forward to your recommendations, and would welcome the opportunity to work with you on this in the future.