

Sample Witness Questions

1. Use of Beneficiary Designations:

- What types of plans use beneficiary designations and what benefits under those plans are paid pursuant to beneficiary designations?
- What percentage of participants completes a beneficiary designation? Does it vary by type of plan?
- Do any plans require submission of a beneficiary designation as a condition for enrollment or receipt of benefits?
- Do any plans share beneficiary designations for convenience or to ensure consistency?
- Do practices regarding use of beneficiary designations vary either by size of plan or size of employer?

2. Plan Document and Form Issues:

- What are the most common default provisions where a valid beneficiary designation is not on file?
- Does the plan document specify a procedure for resolving beneficiary claims? Are such claims subject to the plans claims review procedure?
- Does the plan require a specific form of beneficiary designation?
- Would standard or model templates for beneficiary designations be useful?
- Should plan documents provide that beneficiary designations naming a spouse as beneficiary be automatically revoked in the case of divorce?
- Does the plan permit a change in beneficiary designation pursuant to a power of attorney?

3. Service Provider Issues:

- Does the plan sponsor or the service provider maintain records of beneficiary designations?
- Who is responsible for interpreting beneficiary designations?
- How are beneficiary designations handled when there is a change in service provider?
- Is there typically a separate charge for maintaining beneficiary designations?
- What are the costs associated with maintaining beneficiary designations?

4. Keeping Beneficiary Designations Up to Date:

- Do plan sponsors typically re-solicit beneficiary designations on a periodic basis? If so, what are the costs?
- Are participants informed of beneficiary designations that are on file? If not, how can participants access information about beneficiary designations that are on file?
- Are participants reminded to update beneficiary designations when they have a life event (e.g. marriage, divorce, death of spouse)?
- What are best practices and effective tools in educating participants about the importance of ensuring that their designations are up-to-date?
- Do plans or plan sponsors have processes that are easy to follow to change designations?
- Are beneficiary designations reviewed with participants at retirement or other termination of service?

5. Identifying and Locating Beneficiaries:

- Where the beneficiary designation is generic (e.g., “my children”), what steps does the plan take to identify all potential beneficiaries?
- What steps does the plan take to locate any missing beneficiaries? Who pays the costs?
- What happens when the plan is unable to locate a beneficiary? Is the benefit distributed to the remaining beneficiaries? Is it forfeited to the plan? Is it treated as abandoned property and escheated to the state?

6. Beneficiary Disputes:

- How frequently do disputes arise over disposition of benefits upon death?
- What are the most common circumstances where a dispute arises?
- Do plans typically freeze or suspend benefits pending resolution of a beneficiary dispute?
- Are service providers indemnified against liability for claims where benefits are disputed?
- How are disputes over death benefits usually resolved? Is interpleader an effective process for resolving disputes?
- Are the costs typically paid by the plan, the employer or the service provider?
- If paid by the plan, are they typically deducted from the benefit otherwise payable or charged against the plan as a whole?

7. Issues Regarding QJSA/QPSA's and Spousal Waivers:

- What procedures are in place to handle pre-age 35 QPSA designations becoming invalid at age 35?
- How do plans handle post-death QDRO's? Does it matter whether the QDRO is issued before or after death?
- How do plans comply with state law notarization requirements? Is such compliance necessary (i.e., "witnessed by a notary public" vs. "notarized")

8. State Law Issues:

- Do plans typically treat state laws as preempted by ERISA? Is guidance from the DOL needed on the scope of ERISA preemption in this area?
- How do plans handle the impact of state probate requirements, particularly where the beneficiary is the estate?
- Does the plan or plan sponsors review compliance with small estate probate rules?
- Can witness requirements be satisfied through electronic media?