



AMERICAN BENEFITS  
COUNCIL

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**Testimony of Vicki Blanton  
On behalf of the American Benefits Council  
Before the ERISA Advisory Council  
On Beneficiary Designations**

My name is Vicki Blanton and I am Senior Benefits Counsel in the Legal Department of American Airlines (“American”). I am testifying today on behalf of the American Benefits Council (the “Council”) and want to thank you for giving us the opportunity to discuss this issue from the point of view of an employer. My testimony today focuses on the current processes used by American and some of the problems that arise.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

I have been a practicing attorney for over 20 years and have practiced in the benefits areas for the past 16 years as in-house counsel. During that time, I have watched the beneficiary designation process evolve from paper forms in employee files at the employer to electronic designations generally handled by the third party administrator or TPA. The TPA usually collects the beneficiary designations at the time of enrollment in the plan.

At American we note the beneficiary designation on the participant’s quarterly statements and it is also noted on the online access every time the participant accesses his or her account. This places the information in front of the participant on a regular basis and, hopefully, works as a reminder when their need to update because their beneficiary designations are out of date. Our TPA also handles searches for “lost” beneficiaries or beneficiaries for whom we have no recent

contact information. However, it is important to note that new rules should NOT require the plan administrator to actively and affirmatively reach out to plan participants upon the occurrence of certain life events (marriage, divorce, birth of child, etc.). This would place an undue burden on the plan administrator and such a requirement would be fraught with risk due, in part, to the fact the plan administrator often does not learn of the occurrence of the life event in a timely manner.

Since beneficiary designation forms can be quite dated by the time they are needed – when a participant dies – problems can arise. Sometimes State law provides the answer in the form of defaults but there is often a concern that the State law might be preempted by ERISA. Let me give some examples.

At one point in my career, I worked on governmental plans and at the time, a State law nullified the beneficiary designation of a spouse in the event of a divorce. This nullification provided a lot of certainty and resulted in far fewer beneficiary disputes than would occur without this “default” rule.

Other State laws prohibit a beneficiary from collecting the benefit in the event they were responsible for the death of the participant (“slayer statutes”). Still other State laws dictate the hierarchy that applies in the event of the simultaneous death of the participant and the beneficiary. These types of defaults can be very helpful in plan administration and helps eliminate many of the disputes that would otherwise arise. We think it would be helpful for the Department of Labor (the “Department”) to publish guidance that would allow for some defaults, but allow the defaults to be overridden by plan language. For example, we would suggest that in the event of simultaneous death, the participant would be the “default” survivor because plan sponsors would have better access to the participant’s records. Another useful default would apply to plan mergers where often beneficiary designation forms on a prior plan are difficult or impossible to locate. Perhaps the old plan forms could become null and void for deaths that occur after the old plan is merged providing communications regarding the merger and the ongoing plan document indicate such treatment (and the ongoing plan reaches out to plan participants for new beneficiary designation information).

When there is a dispute or even a lost participant, the participant’s account balance may stay invested in plan options previously selected by the participant for some time after the participant’s death. Generally, the funds stay invested according to the participant’s last investment election until distribution. The distribution amount is then subject to the real investment experience from the date of death until the distribution. The account may be put on hold until the plan is notified of the proper beneficiary. It would be very helpful for the

Department to confirm that plan fiduciaries continue to have fiduciary protection under ERISA Section 404(c) through the date of the distribution (assuming the plan otherwise meets the requirements of 404(c)).

The Council agrees that more awareness on the need to complete and update beneficiary forms is an admirable goal. In my presentations to employee groups, I always ask people to update their beneficiary designation forms. Maybe the Department should consider making some public service announcements on the subject.

Thank you again for providing the opportunity for me to present the Council's testimony from the perspective of a plan sponsor. I welcome any questions you may have.