

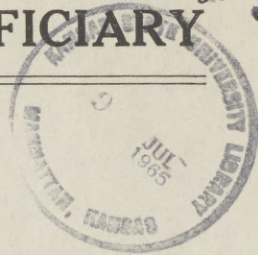
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HEARING

BEFORE THE

SUBCOMMITTEE ON RETIREMENT, INSURANCE,
AND HEALTH BENEFITS

OF THE

COMMITTEE ON
OFFICE AND CIVIL SERVICE
USE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 432

A BILL TO AMEND THE FEDERAL EMPLOYEES' GROUP LIFE
INSURANCE ACT OF 1954 AND THE CIVIL SERVICE RETIRE-
MENT ACT WITH REGARD TO FILING DESIGNATION OF
BENEFICIARY, AND FOR OTHER PURPOSES

MAY 18, 1965

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DESIGNATION OF BENEFICIARY

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DESIGNATION OF BENEFICIARY

TUESDAY, MAY 18, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RETIREMENT, INSURANCE, AND
HEALTH BENEFITS OF THE COMMITTEE ON
POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 219, Cannon House Office Building, Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

(H.R. 432 follows:)

[H.R. 432, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Group Life Insurance Act of 1954 and the Civil Service Retirement Act with regard to filing designation of beneficiary, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first item of the order of precedence in section 4 of the Federal Employees' Group Life Insurance Act of 1954, as amended (5 U.S.C. 2093), is amended to read as follows:

"First, to the beneficiary or beneficiaries as the employee may have designated by a signed and witnessed writing received prior to death in the employing office or, if insured because of receipt of annuity or of benefits under the Federal Employees' Compensation Act as provided in section 6(b) or 6(c) of this Act, in the Commission. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect."

SEC. 2. The first item of the order of precedence in section 11(c) of the Civil Service Retirement Act, as amended (5 U.S.C. 2261 (c)), is amended to read as follows:

"First, to the beneficiary or beneficiaries as the employee or Member may have designated by a signed and witnessed writing received in the Commission prior to his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect."

Mr. DANIELS. The Subcommittee on Retirement, Insurance, and Health Benefits is meeting this morning to receive testimony on H.R. 432, a bill to amend the Federal Employees' Group Life Insurance Act of 1954 and the Civil Service Retirement Act with regard to filing designation of beneficiary, and for other purposes.

H.R. 432, which I introduced, is identical to H.R. 10038 of the 88th Congress, based on an official recommendation of the U.S. Civil Service Commission in that Congress. Its purpose is to clarify the intent of the Congress with respect to the designation of beneficiaries under the Federal Employees' Group Life Insurance Act. Clarifying legislation is needed because of conflicting court decisions. Failure to correct the conflict by legislation undoubtedly will lead to expensive and vexatious litigation in a number of future settlements under the Insurance Act.

The Federal Employees' Group Life Insurance Act authorizes any insured employee to designate a beneficiary in a writing filed with his or her agency and, in the absence of such a written designation, spells

out six other classes of contingent beneficiaries in a specified order of precedence. It contains no other provision for designation of a beneficiary, but authorizes the Civil Service Commission to regulate the filing of designations of beneficiaries and of changes therein.

The Civil Service Commission regulations issued under such authority, inter alia, recognizes a change of beneficiary made in a will or other document only if witnessed and filed with the employing agency or the Commission. This is in complete accordance with the intention of our committee and of the Congress in writing the Insurance Act.

Notwithstanding the foregoing, the U.S. Court of Appeals for the Ninth Circuit in *Austin v. Sears* (292 F. 2d 690) held that a beneficiary named in a will was entitled to payment as a designated beneficiary under the act. The effect is to recognize such a designation even though the filing requirement of the Commission's regulations was not met.

A contrary—and, in fact, correct—decision was handed down by the U.S. District Court, Southern District of New York, in *Menzel v. United States*. This decision, in effect, upheld the Commission's filing regulation. The Supreme Court of Pennsylvania in *Breckline v. Metropolitan* followed the latter decision, after considering and, in effect, rejecting the *Sears* ruling.

H.R. 432 will clear up any further doubt and facilitate the orderly and economical administration of the Federal Employees' Group Life Insurance Act.

Our first witness this morning is the Honorable John W. Macy, Jr., Chairman of the U.S. Civil Service Commission.

I understand Mr. Ruddock is appearing in his place. Will you step forward, Mr. Ruddock?

STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE, U.S. CIVIL SERVICE COMMISSION

Mr. DANIELS. It is always a pleasure to welcome you here.

Mr. RUDDOCK. Thank you, Mr. Daniels. My statement will be brief.

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify for the Civil Service Commission in support of H.R. 432, and wish to thank you, Mr. Daniels, for having introduced the bill.

Chairman Macy's letter of April 22, 1965, to Chairman Murray of the full committee explains the need for this legislation and contains the Commission's recommendation for its enactment. If you agree, Mr. Chairman, I believe it would be well to incorporate that letter in the record at this point.

Mr. DANIELS. Without objection, so ordered.

(The letter referred to follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 22, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: This refers further to your letter of January 11, 1965, requesting Commission report on H.R. 432, a bill to amend the Federal Employees' Group Life Insurance Act of 1954 and the Civil Service Retirement Act with regard to filing designation of beneficiary, and for other purposes.

Section 1 of H.R. 432 is designed to clarify beyond any possibility of misinterpretation the intent of the legislative body that a designation of beneficiary under the Federal Employees' Group Life Insurance Act is required to be filed with the employing office prior to the death of the designator. This legislative proposal was submitted to the 88th Congress by the Commission, resulting in the introduction of H.R. 10038, H.R. 10171, and S. 974. The House bills added provision for a similar Civil Service Retirement Act amendment now contained in section 2 of H.R. 432. We concur in extending this clarification to the Retirement Act. Public hearing was held on S. 974 on February 10, 1964, following which the bill was reported by the Senate Committee on Post Office and Civil Service on August 18, 1964, and passed by the Senate on August 19, 1964. House action was not completed on the legislation, however, and it failed of enactment in the 88th Congress.

Section 4 of the Federal Employees' Group Life Insurance Act (5 U.S.C. 2093) specifies an order of precedence for payment of the insurance in force on any employee at death, the first order reading:

"First to the beneficiary or beneficiaries as the employee may have designated by a writing received in the employing office prior to death;" [Emphasis supplied.]

Section 4 then enumerates the other classes of contingent beneficiaries in the following order of precedence:

- (2) Widow or widower.
- (3) Children or descendants by representation.
- (4) Parents or surviving parent.
- (5) Executor or administrator.
- (6) Other next of kin under law of decedent's domicile at time of death.

Except for the cited language underlined above, the act is silent regarding beneficiary designations, and in exercise of its regulatory authority under section 11 of the law (5 U.S.C. 2100), the Commission adopted a regulation (5 CFR 870.901) to govern the filing and change of insurance designations. This regulation, having the force and effect of law, reads in pertinent part as follows:

"(a) The designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office (or, in the case of (1) a retired employee and (2) an employee whose insurance is continued while he is receiving benefits under the Federal Employees' Compensation Act * * *, in the Commission) prior to the death of the designator.

"(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by the regulations in this part, shall have any force or effect."

Section 11 of the group life insurance policy purchased by the Commission from Metropolitan Life Insurance Co. to carry out this program contains similar provisions.

On June 20, 1961, the U.S. Court of Appeals for the Ninth Circuit in the case of *Austin v. Sears* (292 F. 2d 690) held that a beneficiary named in a will was entitled to payment as a designated beneficiary under the act. The court stated in pertinent part:

"Defendants have * * * contended that a designation of beneficiary by will is ineffective in the instant case. No *express* prohibition in this regard is found in the policy, in the certificate handed the insured, or in the statutes creating Federal employees' group life insurance * * *." [Emphasis supplied.]

In effect, the judgment held as of no consequence the statutory and regulatory requirement of filing a designation prior to death and ignored the order of precedence stipulated in the act.

A contrary and, in our opinion, correct conclusion was reached by the U.S. District Court, Southern District of New York, in the case of *Menzel v. United States*, involving interpretation of a similar provision in the Civil Service Retirement Act. On March 22, 1961, the court recorded the following conclusion of law.

"The will of Ernest Sunday executed December 23, 1938, was never filed with the U.S. Civil Service Commission and was not a legal or proper designation of his estate or of the executrix of his will, or of the residuary legatee named therein, as a beneficiary under the provisions of the U.S. Civil Service Retirement Act" after rationalizing as follows:

"The benefits under the Retirement Act are statutory; and in order to have a right to receive them, a claimant must show that all that the statute required to be done to entitle the claim to favorable consideration was in fact done. A disposition or intention on the part of a deceased employee spelled out from other documents or circumstances is not sufficient. * * * But the fact

remains that Ernest Sunday did not do the thing he should have done and did not file the designation he should have filed in order to deprive his wife of any interest in the said fund, after the amendment of the act dated June 14, 1950. The statute establishes the rights of the parties and specifies how those rights may be created, either by a compliance with the provisions of the act in filing a proper designation of a specific beneficiary or, on a failure to do so, by permitting the order of precedence set forth in the act at the time of the employee's death to become operative."

Similarly, the Supreme Court of Pennsylvania in *Breckline v. Metropolitan*, after considering *Austin v. Sears* but holding it not persuasive, held (March 13, 1962, 178 A. 2d 748) invalid under the Insurance Act a designation of beneficiary not filed in the employing office prior to the designator's death.

A small but steadily increasing number of court actions involving similar circumstances are being brought by claimants under the act. If the principle laid down in *Austin v. Sears* stands and is followed by the courts in other cases, the Commission or Metropolitan Life Insurance Co. could never be sure, with the overhanging threat of possible conflicting provisions in a will, that an insurance payment made in accordance with the law is correct. At the present time life insurance benefits are paid to the persons entitled promptly after the death of the insured. If the doctrine of *Austin v. Sears* prevails, it will be necessary to delay payment in every case to provide the opportunity, even investigating or soliciting information in the area, for every person who may possess a document which might affect the determination of payee to present the paper for consideration. This would work a severe financial hardship on the family of the decedent at a time when unusual expenses have been incurred in connection with the last illness and burial of the former employee.

The requirement of filing a beneficiary designation with the agency (or with the Commission after retirement) is a reasonable one, preventing to a limited extent deathbed designations often executed under stress or influence by a designator in extremis or not in full possession of his faculties.

The Commission desires to have a uniform practice in the cases arising in this area to avoid misunderstanding and litigation. The time-consuming administrative problems which arise from such a situation can be avoided by amendment explicitly stating congressional intent with regard to filing a designation of beneficiary.

Enactment of H.R. 432 will not result in any cost to the Government, but will produce an administrative saving in connection with adjudicating claims and should eliminate litigation in this area. The Commission recommends its early enactment into law.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

Mr. RUDDOCK. The Federal Employees' Group Life Insurance Act provides for payment first to the beneficiary "designated by a writing received in the employing office prior to death" of the insured.

The act then enumerates the other classes of persons entitled to payment, in the absence of a designated beneficiary, in the following order:

- Second, widow or widower;
- Third, children or their descendants by representation;
- Fourth, parents or the surviving parent;
- Fifth, executor or administrator; and
- Sixth, other next of kin under law of the State of domicile at death.

The designation of a beneficiary is purely optional and insured employees are counseled that it is not necessary to designate if the order of payment satisfactorily covers their particular situations. Where a designation is made, however, it is important to the insured, to the beneficiary, and to the office settling the claim, that there be clear and understandable rules on the filing of a valid designation. To afford such a clear-cut rule, the Commission has issued regulations detailing the requirements that the designation be in writing, signed

and witnessed, and filed with the employing office; or, for insured retirees or Compensation Act beneficiaries, with the Commission, prior to the death of the designator. In addition the regulation, but not the act itself, specifically bars recognition of any change or cancellation of beneficiary in a will or other document not so filed with the employing office.

Despite these precautions, a difficulty arose in the form of a 1961 court decision. In the case of *Austin v. Sears*, the U.S. Court of Appeals for the Ninth Circuit held that a person named in a will not filed with the Commission was entitled to be considered the designated beneficiary for purposes of the insurance payment. While this decision was of a sympathetic nature and other court decisions are to the contrary, upholding the act and regulations, the Commission decided it should seek legislation to make the filing requirements statutory and literal beyond question.

The Commission submitted legislation to amend the Insurance Act to the 88th Congress. The bill, S. 1974, passed the Senate, but no action was taken by the House of Representatives. Last year, however, the staff of your committee suggested that the perfecting change be added to the Civil Service Retirement Act as well. The Commission is in agreement with this constructive suggestion and has recommended that the retirement act change be included.

The Commission believes that enactment of H.R. 432 will produce several beneficial results:

1. It will state a clear rule which will minimize misunderstanding on the part of employees and their beneficiaries.
2. It will help avoid costly appeals and litigation by clarifying the statutory intent.
3. It will facilitate prompt settlement of claims by eliminating the risk of possible conflicting provisions in a will or other document not filed as required. Conversely, it will avoid those delays which would occur if it were necessary to wait for assurance that the latest document is at hand.
4. It will not result in any added Government cost. Some slight administrative savings will result.

The Commission respectfully urges favorable action on H.R. 432.

Mr. Chairman, in summary, the position of the Commission is that the rule itself is not nearly so important as is the necessity to have a rule which is positive and definite.

The adjudicating office, we think, needs to be in a position to know that this is the rule. Payment can be made promptly upon the death of the insured, with assurance that this payment will be to the right person, and that there is no uncertainty or confusion as to what the rule may be.

Mr. DANIELS. Mr. Ruddock, the chairman wholeheartedly agrees with your views on this subject, and for that reason the chairman introduced this bill earlier in the session. I would like to know, however, if there are any claims pending now with respect to the matter that is in issue here.

Mr. RUDDOCK. I am not aware of any court actions pending at the present time. However, we do not necessarily become aware of each court suit which arises under the Federal Employees' Group Life Insurance Act. Under that act, the Civil Service Commission has a contract with Metropolitan Life Insurance Co. They act in behalf

of the insurance industry. There are 254 other life insurance companies acting as reinsurers, but the Metropolitan Life Insurance Co. does all the adjudication of the life insurance claims.

When a claim is filed with them, and a record claim is filed by a person with a conflicting interest, their ordinary course of action would be to interplead the matter, frequently in a local court. The Commission is not a party to those actions and, except as we request information on what litigation is pending, we are not aware of each individual suit. However, the potential for litigation exists at all times.

Mr. DANIELS. Well, it's understandable that conflicts could arise by virtue of this provision.

Mr. RUDDOCK. Could very easily arise. If the rule is positive and definite that the designation of beneficiary, to be valid, must be filed in the employing office, then there is one place to look. If there is no designation in that place, then you can immediately proceed to make a valid payment to the widow, and you need not wait to see whether a will is found in the bureau drawer or filed away in a suitcase, or wherever it might be.

Incidentally, only about 5 percent of employees find it necessary to file a designation of beneficiary. The order of precedence specified in the law takes care of most family situations.

Mr. DANIELS. Mr. Matsunaga. Do you have any questions?

Mr. MATSUNAGA. Thank you, Mr. Chairman. Mr. Ruddock, in that *Sears* case, had there been a designation of any beneficiary?

Mr. RUDDOCK. No, sir; there had been no designation filed with the employing office while Mr. Sears was employed, nor was one filed with the Commission after he retired.

Mr. MATSUNAGA. In such a case, under the present statutes, would you follow the order of succession as stated in the State law?

Mr. RUDDOCK. No; the order of precedence in the Insurance Act would govern. Where there is no designated beneficiary, the payment would be made first to a surviving spouse; if none, then to surviving parents.

Mr. MATSUNAGA. You do have an order of succession within the insurance law itself?

Mr. RUDDOCK. Yes. Fifth in that order of precedence is the executor or administrator of the estate, so, if there was no designated beneficiary, no surviving widow, no children, and no surviving parents, then payment would be made to the executor or administrator of the estate, and he would dispose of the proceeds as designated by will or under the intestate laws, if there were no will.

Mr. DANIELS. That order of precedence is clearly set forth in the statute today, is it not?

Mr. RUDDOCK. Yes, it is. The order of precedence, by the way, resulted from our experience in the administration of the Civil Service Retirement Act. Prior to 1950, there was a requirement that every Federal employee file a designation of beneficiary for retirement purposes. We accumulated a file of approximately 5½ million designations at a time when there were only about 1½ million Federal employees, but designations accumulated over the years because of turnover.

In going through the file, we found that where employees did designate, almost without exception they designated a wife or husband, if there was one. If they had no wife or husband, the person desig-

nated was usually a child. And so, the order of precedence now spelled out in both the Retirement Act and the Life Insurance Act follows the natural wishes of the vast majority of Federal employees.

Mr. DANIELS. Mr. Matsunaga, do you yield?

Mr. MATSUNAGA. Yes.

Mr. DANIELS. That order of precedence is set forth in section 4 of Public Law 598 of the 83d Congress.

Mr. MATSUNAGA. In the event of conflict, Mr. Chairman, between the succession laws of the State and the Federal statute here involved, which would prevail?

Mr. DANIELS. The statute—no. You mean the statutory law of the State?

Mr. MATSUNAGA. The succession laws of the State, in the event of nondesignation of a beneficiary.

Mr. DANIELS. This is incorporated in the statute, so therefore the statute would prevail and have precedence.

Mr. RUDDOCK. My opinion would confirm that, Mr. Chairman. The Federal statute would require the payment to be in the order of precedence spelled out in the Federal statute.

Mr. MATSUNAGA. But then the issue arose in the *Sears* case, did it not?

Mr. RUDDOCK. The issue arose in the *Sears* case because the court said, in effect, this provision which is in a will, which Mr. Sears filed, will be considered as if it were a designation of beneficiary for purposes of the Life Insurance Act.

Mr. MATSUNAGA. Had the court not so ruled, under the statute, who would have received the insurance funds?

Mr. RUDDOCK. It would have gone, as I remember it, to the son and daughter of Mr. Sears in equal shares. I believe he was not survived by a widow. That's my recollection of the facts in that particular case.

Mr. MATSUNAGA. But instead the court ordered that it be paid to the one named in the will.

Mr. RUDDOCK. That's right. There was a conflicting decision, a later decision, in *Breckline v. Metropolitan*, which was a determination on precisely the same point under the Civil Service Retirement Act. In that case, the court upheld the statute and the regulations, and it was from that point on, in 1961, that we became slightly uncertain as to which rule is the definite rule that will be followed.

We are still proceeding to follow the rule as we understand the law, and the regulations, and are not following the decision of *Austin v. Sears*.

Mr. MATSUNAGA. This, Mr. Chairman, we can take up in executive session, but don't you feel that, Mr. Ruddock, even if we pass this bill, there would still be a possible conflict between State law and Federal statutes? Laws of succession, as you know, are determined by State law, and, well, it may be that some States would decide that the Federal Government cannot, by statute, abrogate State laws of succession.

Mr. RUDDOCK. Well, I believe this would be considered dicta, but part of the reasoning in *Breckline v. Metropolitan* was that, since it is a Federal statute which establishes this insurance fund, that the money being paid is derived from a Federal statute, there can be no question of the supremacy of the Federal statute, if there were a conflict of laws.

Austin v. Sears did not involve the point of a conflict between Federal and State law; even under the Federal law, if payment is made to the executor or administrator, or if payment is made to the next of kin, that payment is made precisely in accordance with the terms of the State law.

Mr. MATSUNAGA. Well, supposing there is a conflict in the order of succession.

Mr. RUDDOCK. We would hold the beneficiary designated according to the law to be the first to be paid. We would proceed next to the widow or the widower, and next to the surviving children, and next to parents.

Mr. MATSUNAGA. That's according to the statute. But suppose, let's say, in the State of Hawaii, the law of succession provides that personality will go, as this would be the case, that is, insurance returns: one-half to the widow, and one-half to the children equally, whereas the statute would provide all to the widow, right?

Mr. RUDDOCK. Yes, if there were no designated beneficiary.

Mr. MATSUNAGA. There is this conflict, then. Suppose he fails to designate a beneficiary by notice to the agency, then he dies intestate, and then you have the conflict: Which is to prevail, the statute?

Mr. RUDDOCK. You certainly raise an interesting question.

Mr. DANIELS. If I may interrupt, I would like to say that I don't believe there is any conflict. In the first place, the insurance comes into existence by virtue of Federal statute, and the statute sets forth specifically the order of beneficiaries, in the absence of the insured designating a beneficiary. So, therefore, the statute would apply.

Second, I would like to state that there is no conflict with State law because the parties have entered into a contract, and the contract sets forth exactly the same provisions as are set forth in the statute, that the insured may designate a beneficiary, but in the absence of such designation, then the following people shall inherit in the order set forth in the contract. So, therefore, you not only have the statute, but you have the contract existing between the parties.

Mr. MATSUNAGA. But then the contract was abrogated by the *Sears* case because, as I understand it from what little I have heard here, in the *Sears* case there was a will written, designating someone other than a person who would have properly taken by the statute.

Mr. DANIELS. That decision was rendered in 1961, but subsequently—

Mr. MATSUNAGA. I think what we ought to make clear in the statute itself is that it prevails, regardless of State laws. Unless we specifically so state, I am afraid that we are going to have State courts deciding in favor of the State laws of succession, just as in the *Sears* case where it was indicated that, because of the State law providing that the person designated by the will shall prevail, the person so named prevailed.

Mr. RUDDOCK. Congressman, you have raised an extremely interesting point, one that I had not heard raised before. I am trying to reflect from my study of conflict of laws in law school—but that was a long time ago—and if I remember correctly, any time there is a direct conflict of law between the Federal and a State statute, the State statute must fall. The Federal statute will govern in any direct conflict.

Mr. MATSUNAGA. Not in the case of laws of succession. Anyhow, it is an interesting question which we can take up in executive session,

but I think if we wish to avoid this situation we are going to have to so specify. If the Federal Government, if Congress, intends to preempt this field, then it should so indicate. And if it is the intention of Congress to preempt it, we must so specifically indicate. Then there is no question.

Mr. DANIELS. Off the record.

(Discussion off the record.)

Mr. MATSUNAGA. No further questions.

Mr. DANIELS. I think that the point has been brought out in this discussion between Mr. Matsunaga and myself. What I had intended to ask was this: Do the policies that are issued contain the clause setting forth the line of precedence with respect to beneficiaries; that is, does it give the insured the right to designate a beneficiary in writing? And in the absence of such designation, that the proceeds of the policy would inure, first, to the benefit of the widow or widower; second, to the children or their descendants by representatives; third, to the parents or the surviving parent; fourth, to the executor or administrator; and fifth, to other next of kin under the law of the State of domicile at death.

Mr. RUDDOCK. This is spelled out in detail in the insurance certificate which is given by the employing agency to the employee at the time he becomes insured. It is also spelled out specifically and in detail in the group policy which is between the Civil Service Commission and the Metropolitan Life Insurance Co.

Mr. DANIELS. In addition, it is in the statute thereunder under which this insurance is written.

Mr. RUDDOCK. Yes, sir; and in the regulations of the Commission.

Mr. DANIELS. The next witness is Mr. Stanly Lewis.

**STATEMENT OF J. STANLY LEWIS, SECRETARY-TREASURER,
NATIONAL ASSOCIATION OF LETTER CARRIERS**

Mr. LEWIS. Good morning, Mr. Chairman and members of the subcommittee. My name is Stanly Lewis. I am the secretary-treasurer of the National Association of Letter Carriers, and I am pleased to have the opportunity of appearing before your group this morning for the purpose of giving the position of our organization of letter carriers on this legislation.

We desire to associate ourselves both with the chairman who introduced H.R. 432 and with the Civil Service Commission which recommended its passage.

We believe that this legislation will be most helpful in clearing up some areas where there is some doubt now and where there might be some delay in paying benefits to which certain deceased employees' survivors are entitled.

I want to congratulate the committee on having this hearing and place ourselves on record as supporting it.

Mr. DANIELS. Thank you, Mr. Lewis.

Mr. Matsunaga, do you have some questions?

Mr. MATSUNAGA. You are in full support, Mr. Lewis?

Mr. LEWIS. Yes, Mr. Matsunaga.

Mr. MATSUNAGA. You have no questions about the questions raised here earlier?

Mr. LEWIS. Not being a lawyer myself, the things you raised were pretty technical decisions. I listened with great intent to the dis-

cussion and, from a layman's point of view, I find myself in accord with the expressions given by Mr. Daniels and Mr. Ruddock. However, as I say, not having a legal background, I am in no position to have a firm opinion or an authoritative opinion on this matter.

Mr. MATSUNAGA. We normally would not expect a decision such as in the *Sears* case. What I was trying to emphasize is that we need to take care of any eventuality.

Mr. LEWIS. I think the point Mr. Ruddock made is that this is establishing a rule, whether the rule be this way or that way, and I believe this legislation would serve that purpose of establishing a rule.

Of course, any rule could be tested by the courts at a later time, and proved to be faulty or correct; but this is something that only can be accomplished by that rule.

Mr. MATSUNAGA. No further questions.

Mr. DANIELS. Mr. Clevenger?

Mr. CLEVINGER. No questions, Mr. Chairman.

Mr. DANIELS. Thank you, Mr. Lewis.

We had scheduled as our last witness Mr. McCart. I understand he is unable to appear here today, but has submitted a statement which will be filed with the record of this hearing, if there is no objection.

Also, for the record, a statement has been submitted by Mr. John Griner, president, American Federation of Government Employees.

These statements will be offered for the record, if there is no objection.

(The statements follow:)

STATEMENT OF JOHN A. MCCART, OPERATIONS DIRECTOR, GOVERNMENT
EMPLOYEES' COUNCIL, AFL-CIO

Mr. Chairman and members of the subcommittee, the Government Employees' Council, representing 31 AFL-CIO unions with members in the classified, wage board, and postal services, desires to endorse the proposal embodied in H.R. 432.

The bill will provide needed clarification in the present Federal Employees' Life Insurance Act, will insure equity to the beneficiaries of employee policies and will facilitate the administration of the program by the Civil Service Commission.

The present statute requires payment upon the death of the employee first to the individual or individuals designated in writing by the insured and deposited with the employee's agency prior to his death.

In instances where the deceased employee has designated a beneficiary in his will, Federal courts have adopted different interpretations on the application of the law. A U.S. court of appeals, for example, found in one case that the person named in a will was entitled to payment as beneficiary of a deceased Federal worker's insurance policy, despite the order of precedence supplied in the act. Federal and State courts have decided other similar cases on the contrary view that the precedence listed in the original act prevails, regardless of whether the decedent names another beneficiary in a will or other document.

There are several undesirable effects from these differing interpretations. If the courts continue to require recognition of designees in wills counter to the order of precedence supplied in the present law or to recognize the individual designated in a will, who is not the same as the one named earlier by the employee to his agency, a considerable degree of uncertainty will be forced upon the Civil Service Commission in making payments upon the death of the employee. It will have no assurance that payments proffered in accordance with the present statute will be accepted by a court as legally correct. It will have to delay payments in many cases until a determination has been made about the existence of a will or other disposition of an employee's estate. This could cause serious hardship to the family of an employee at a time when the financial need may be the greatest.

In our view, it is necessary that there be a clear-cut legal definition of the order of beneficiaries so as to avoid confusion and additional suits. H.R. 432 accomplishes this objective by making it clear that a designation document filed

after an employee's death or filed in an improper place will not supersede a previous legal designation or the order of precedence prescribed in the act.

We urge the subcommittee to take favorable action on the pending bill.

Mr. Chairman, the Government Employees' Council appreciates the opportunity to offer its comments on the measure under consideration.

STATEMENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The bill H.R. 432 has the support of the American Federation of Government Employees because it provides a protection for the employee as well as the beneficiary he designates.

The sponsor of the bill, Representative Daniels, chairman of the Retirement Subcommittee of the House Post Office and Civil Service Committee, has done a real service to employees covered by both the Group Life Insurance Act and the Retirement Act in proposing the amendment to these laws.

The amendment proposed is a perfecting amendment which gives specific preference in a settlement under the Group Life Insurance Act or a lump-sum benefit under the Retirement Act to the beneficiary or beneficiaries designated as required in the bill and filed with the employing office in the case of the Life Insurance Act, or with the Civil Service Commission in the case of the Retirement Act.

The proposed amendment to these two laws would not change the existing order of payment now provided by these statutes. It would, however, give unmistakable recognition to the designation of one or more beneficiaries which had been properly executed and filed as opposed to a later change in a will or other document which had not been filed as directed in the proposed amendment.

The intended change in these two laws would put the courts on notice that a designation of beneficiary properly executed and filed would take precedence over any other document. The wording in the bill which provides this clarification of these laws is that which appears in the last sentence of the amendment to each law: "For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect."

These laws already provide for payment first to a beneficiary or beneficiaries and then to specifically named relatives or a legal representative and finally to next of kin. It had appeared that since the beneficiary was named first, payment would be made to that individual. However, one Federal court of appeals decision (*Austin v. Sears*, 292 F. 2d 690) upheld the claim of a different individual named in the will of a deceased employee as the one who was entitled to payment. This raised a question as to the need for amending these laws to eliminate confusion as to who should receive payment.

While the bill would not change the order of precedence of payment, it would have the effect of expediting payment by clearing up any conflict as to the validity of the document which is to govern payment. As between a designation of beneficiary which had been signed, witnessed, and filed, and a change of beneficiary in a later will or other document not filed with the employing office or the Commission, the designation on file would have precedence.

It is plain that the proposed amendments are both important and urgent, and for those reasons they should be enacted without delay. Enactment obviously would clear up any conflict in claims and would entail no cost to the Government. In fact, it would result in a saving by reducing unnecessary administrative action and eliminating possible litigation.

We appreciate the opportunity to submit this statement, Mr. Chairman.

Mr. DANIELS. That concludes today's hearing.

(Whereupon, at 10:40 a.m., Tuesday, May 18, 1965, the subcommittee adjourned.)

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10.10 a.m. Tuesday, May 12, 1965, the subject

