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Report to Congressional Committees

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PRIVATE PENSIONS

Spousal Consent Forms Hard to Read and Lack Important Information

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GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

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December 27, 1989

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate

The Honorable Dan Rostenkowski
Chairman, Joint Committee on Taxation
Congress of the United States
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Edward M. Kennedy
Chairman, Committee on Labor
and Human Resources
United States Senate

The Honorable Augustus F. Hawkins
Chairman, Committee on Education
and Labor
House of Representatives

In keeping with the movement to write in "plain English," organizations such as the Social Security Administration and the National Association of Insurance Commissioners have developed standards to improve the material they prepare for public use. The standards help these organizations assure that their forms and other documents are easy to understand and use. As yet, no such standards have been adopted by the pension industry.

The purpose of this review was to examine the content and readability of certain government-required pension documents. In particular, we examined the forms that companies use to meet the spousal consent requirement of the Retirement Equity Act of 1984 (REA). This requirement was established after women testified during congressional hearings that their rights to survivor benefits were not adequately protected. They said that some husbands without consulting their wives chose pension options that paid higher benefits during their own lifetimes but did not provide a continuing benefit to their widows. According to witnesses, this sometimes left the wife unprepared financially for his death.

REA addressed this situation by requiring employers to obtain written consent from spouses of retiring workers who choose pension benefits payable only during their own lifetimes, but not during their spouses'

Background

Unless the spouse consents otherwise, private pension plans that offer annuities (e.g., monthly payments) must automatically provide, at a minimum, a 50-percent joint and survivor (J&S) annuity to their retiring married workers. Under a 50-percent J&S annuity, if the retiree dies before the spouse, the spouse will receive an annuity that is 50 percent of the retired worker's monthly pension amount. For example, if a married retiree receives $800 per month in pension income from a 50-percent J&S annuity, the surviving spouse would receive 50 percent of that amount ($400 per month) after the retiree's death.

The J&S monthly pension amount is usually lower than the amount the married worker would have received from a single-life annuity, since the single-life pays benefits only during the worker's lifetime. For example, if two similarly aged married men retired from a company with identical salary and work histories, the man choosing a single-life annuity might receive $1,000 per month during his lifetime, but his widow would receive nothing after his death. In contrast, the worker choosing a 50-percent J&S annuity would receive a reduced amount (such as $800 per month) during his lifetime, and his widow would receive half that amount ($400 per month).

Under REA, a married worker's decision not to take a J&S annuity is effective only if (1) the spouse consents to it in writing, (2) the signature is witnessed by a pension plan representative or notary public, and (3) the spouse's consent acknowledges the effect of not selecting the J&S annuity. Generally, the effect of rejecting the J&S annuity is that the spouse will not receive lifetime pension benefits after the worker dies. Spousal consent is not required if the worker establishes that there is no spouse or the spouse cannot be located.

IRS is responsible for issuing regulations implementing the spousal consent provision in REA and for determining if plan provisions, including those on survivor benefits, satisfy legal requirements that pension plans must meet to qualify for preferential tax treatment. For example, IRS reviews pension plan documents to determine if the provisions meet the minimum 50-percent J&S annuity requirement and require written spousal consent when the J&S annuity is not selected by married workers.

The Department of Labor also reviews certain pension plan documents, including summary plan descriptions and annual reports. Labor is responsible for receipt and review of the documents as administrator of reporting and disclosure provisions of the Employee Retirement Income

Spousal Consent Forms Vary in Content

Neither the law nor regulations state the type of information employers must include in spousal consent forms. Our analyses of 106 consent forms found that the forms varied in how much information they provided about the terms of the J&S annuity and how they explained the consequences of rejecting it.

Description of J&S Annuity

Spouses need to know the terms of the pension plan's J&S annuity when they are deciding if it is the best payment option for them. For example, it is important to know that the retired worker's monthly payment under the J&S annuity will be lower than it would have been under a single-life annuity. About one-fourth of the spousal consent forms did not provide this information. The forms did a better job of providing information regarding the portion of the monthly benefit the spouse will receive after the worker's death. Eighty-six percent of the forms presented this information (see table II.4). The following illustrates how some of the forms described the J&S annuity option by combining these two terms into a single statement. Note that it describes the option from the retiring worker's point of view.

"I am married and I elect to receive a reduced retirement allowance payable during my life, and upon my death one-half of my reduced retirement allowance will be payable to my spouse." (See example 1 in app. III.)

Finally, the monthly dollar amounts the couple and the surviving spouse could expect to receive under the different payment options (e.g., J&S annuity, single-life annuity) are important considerations when making a decision. Having this information makes it easier to understand the effect of rejecting the J&S annuity (see examples 2 and 3 in app. III). Forty percent of the forms listed the specific monthly dollar amounts under the different payment options. Sixty percent of the forms did not list these amounts, although 7 percent referred the reader to either the benefits manager or other documents for this information.

Less than one-half (40 percent) of the consent forms we reviewed presented information in each of these three areas: reduced monthly benefit, portion of benefit continuing to surviving spouse, and various dollar amounts specific to the couple.

annuity was located in a single area close to the spouse's signature line. When the acknowledgement statement is located near the spouse's signature line, spouses can read the consequences of their decision immediately before signing.

Spousal Consent Forms Can Be Difficult to Read

Many of the spousal consent forms we reviewed were difficult to read based on readability formulas.[3] In the past, IRS and Labor have addressed the issue of the readability of pension documents by requiring certain documents to be presented in nontechnical language.[4] IRS also has often clarified requirements under tax laws and regulations, generally, by providing model language. However, IRS has not issued regulations requiring spousal consent forms to be written in nontechnical language or developed model language for presenting the information.

Readability Scores of Spousal Consent Forms

The Flesch formula (also known as the Flesch Reading Ease Scale) gives a readability score between 0 and 100, with the lower score indicating greater reading difficulty. The scores are grouped into seven categories, ranging from very difficult to very easy (see table IV.1).

Based on the Flesch formula, 56 percent of the forms in our sample received a score between 0 and 50, which is considered "very difficult" to "difficult." Only 7 percent of the forms received a score between 61 and 70, which is considered plain English. The National Association of Insurance Commissioners recommends a Flesch score of 40 or higher for life and health insurance policies. Our analyses show that 16 percent of the forms did not meet the association's recommended Flesch score.

Another readability formula, the Flesch-Kincaid, estimates the number of years of education necessary to understand written material. According to this formula, 64 percent of the forms had a 12th grade reading level or higher (see table IV.2), whereas one-third of the retirement-age population (aged 60-64) has not completed 12th grade, according to 1987 Census data.

[3]Readability formulas are based on the number of words per sentence and syllables per word to determine the level of reading difficulty.

[4]Pension law requires employers to provide pension plan information written in nontechnical language to workers in documents called summary plan descriptions. We used the formulas on appropriate sections from the descriptions to see if more understandable information regarding the J&S annuity was given there. We found similar readability problems (see app. V for results).

Others were less clear:

"A reduced monthly retirement income to be paid to me for as long as I live. After my death, a monthly income of _____ 50%, _____ 100% of such reduced income shall be paid to _____ for his or her life if said person survives me."

In the above example the worker has to choose either a 50-percent J&S annuity or a 100-percent J&S annuity. The form did not notify the couple that the "reduced monthly income" will be "more reduced" if they choose the 100-percent option than if they choose the 50-percent option. Couples may select the 100-percent option because they mistakenly think they will get more money.

Poor Organization and Lack of Headings

Clear organization and informative headings constitute one of the two major requirements of a plain English document cited in state laws such as New York's Sullivan Law,[5] require plain English in consumer contracts. Of the 30 consent forms reviewed, 6 divided up information in ways that are helpful to readers, according to our consultant. In contrast, one form consisted of a two-sentence description, with one sentence 100 words long and the other 17 words long (see example 4 in app. III).

Forms Used Rather Than Letter Format

Many people feel uncomfortable dealing with forms, but most are comfortable reading letters, according to GAO's consultant. Of the 30 consent forms, 8 were presented to the reader as letters and provided much more content and explanation than the other 22, which were presented as forms or memos. In the letters, the plan administrators addressed the employee personally by inserting data specific to the individual (such as birth dates and dollar amounts under different pension payment options).

Typographical Characteristics Affect Reading Ease

Length of the printed line, size of type, and use of capitalization are among the design characteristics that affect a document's readability and use. Most of the 30 forms reviewed by our consultant had very long lines of type, typically strung across the page in a single column. With this design format, readers often have difficulty moving from line to line. For text meant to be informative, a double column format or an

[5]N.Y. Gen. Oblig. Law Section 5-702 (McKinney 1989).

is selected (e.g., by providing the estimated dollar amounts per month the couple and surviving spouse would receive under various payment options offered by the pension plan).

To help employers present this information in nontechnical language, IRS should develop model language for presenting information in the spousal consent form. IRS guidelines for these forms should consider issues of content, readability, and design.

Agency Comments

In an October 13, 1989, letter (see app. VI), the Commissioner of Internal Revenue agreed with our recommendations for IRS action to improve the readability of spousal consent forms. The Commissioner agreed that plans should do more to provide basic, understandable information on survivor benefits to spouses of retirees and stated that IRS will continue to look at what further guidance can be issued under the statute. Elsewhere, he has stated he is "initiating a comprehensive review of existing requirements with a view to substantial revisions down the road."

The Commissioner also agreed that publication of model language for use by employers in drafting spousal consent forms could be helpful. However, he cautioned that IRS may not be able to draft language that would apply in a large number of cases because of the variety of ways that benefit payments are made.

Our review was performed in accordance with generally accepted government auditing standards. We obtained written comments from IRS (see app. VI) and oral comments from Labor and the Pension Welfare Benefits Administration, incorporating them where appropriate. Additional information on problems encountered by plan administrators in implementing REA's spousal consent requirement is provided in appendix VII. A list of other GAO reports addressing the REA mandate is provided at the end of this report.

Copies of this report are being sent to interested Senate and House committees and subcommittees, the Commissioner of Internal Revenue, and the Secretary of Labor. We will also make copies available to others on

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per sentence and syllables per word. Generally, the two formulas were applied to all the sentences in each consent form. Because the SPDs were long, we entered into the formula only sentences from sections of each SPD that described the J&S annuity and how benefits are paid. We did not interview spouses and retiring workers to evaluate how well they understood the consent forms. Nor did we evaluate consent forms to determine if eligible spouses actually signed them.

GAO's consultant reviewed 30 spousal consent forms to evaluate their document design and identify problems that impair comprehension. Of the 30 forms, half had good readability scores and half had poor readability scores. This consultant is a specialist in the field of document design, where the goal is to simplify documents and make them easier for users to understand.

Table II.3: Administrators' Views About Methods Spouses and Workers Relied on Most to Learn About the J&S Annuity

Method of gaining information	Percentage of administrators: Spouse (N=3,816)[a]	Percentage of administrators: Worker (N=3,823)[b]
Reading the spousal consent form and accompanying letter	37	26
Reading supplementary material	5	7
Talking with benefits managers, retirement counselors	19	49
Talking with retiring worker	19	—[c]
No one method predominated	8	12
Don't know	11	6
Total	**100[d]**	**100**

[a]The estimated number of pension plans responding from the universe. This estimate is derived from the 401 plans that answered this question.

[b]The estimated number of pension plans responding from the universe. This estimate is derived from the 402 plans that answered this question.

[c]Data not available.

[d]Column does not add to 100 due to rounding.

Table II.4: Various Terms of the J&S Annuity in Spousal Consent Forms

Terms	Percentage of forms (N=106)[a]
If J&S option is selected, worker's pension will be reduced	76
When worker dies, spouse's survivor pension will be a certain percentage of the worker's pension	86
Specific dollar amounts that a couple will receive under different benefit options[b]	42
Form presented information on all three of the above terms	40

[a]The number of spousal consent forms randomly selected by GAO for content and readability analyses.

[b]Of the plans that did not provide dollar amounts, 7 percent referred the reader to another document or to the benefits manager for this information.

Example 1

EMPLOYEES' RETIREMENT PLAN OF THE

APPLICATION FOR RETIREMENT & ELECTION OF BENEFITS

Active No._____

Name_____ Soc. Sec. No._____

I hereby make application for_____
(Normal) (Early) (Deferred)
Retirement effective on _____ under the Employees' Retirement Plan
(date)
of the

I was born on_____(submit evidence).

I elect to have my retirement allowance payments begin on_____.

REGULAR FORM OF PAYMENT:

I elect that my retirement benefit will be paid to me, as follows:

( ) I am single and I elect to receive a retirement allowance that stops at my death.

( ) I am married and I elect to receive a reduced retirement allowance payable during my life, and upon my death one-half of my reduced retirement allowance will be payable to my spouse.

Spouse's Name _____ Soc. Sec. No._____

Address_____

Birthdate_____(Submit evidence as to birthdate and marriage.)

ELECTION NOT TO RECEIVE REGULAR FORM OF PAYMENT:

( ) I am married and I elect to receive a retirement allowance that stops at my death.

OPTIONAL FORM OF PAYMENT:

I elect to receive my retirement benefit under the following optional form of payment:

(Note: For the options to be effective with the date payments begin, you should elect the option one year before such date. If you elect such an option within one year of the date payments begin, you must furnish the Retirement Board with satisfactory evidence of your good health. You may revoke or change your election of an option at any time more than one year before the date payments begin. If you revoke or change such an option within the one year period prior to the date payments begin, you must furnish the Retirement Board with evidence of your good health. Once the option becomes effective, you may not cancel it.)

(over)

Example 2

MARRIED PARTICIPANT ELECTION OF OPTION FORM

I have read the letter on the reverse side of this form and I understand my options as to the type of penion options being offered. I hereby make the following election:

CHECK ONLY ONE BOX

☐ **AUTOMATIC HUSBAND & WIFE OPTION (SPOUSE OPTION):** I wish my pension to be paid in accord with the spouse option. I am attaching a copy of my marriage certificate and a copy of my spouse's birth certificate.

_____ _____
Signature of Participant (Member) Date Signed

☐ **STRAIGHT LIFE PENSION OPTION:** I wish my pension to be paid to me on a straight life basis. I do **not** want the Husband & Wife Option.

_____ _____
Signature of Participant (Member) Date Signed

SPECIAL NOTE

Your SPOUSE must sign this form in front of a Notary.

I, _____, am the legal spouse of the participant above. I hereby consent to my spouse's rejection of the Husband and Wife Option. I understand I will not receive a pension from this Plan after the death of my spouse.

_____ _____
Date Signature of Spouse

_____
Spouse's Social Security No.

State of _____)SS:
County of _____)

On the _____ day of _____ 19 ____ before me came _____ to be known and known to me to be the person described in and who executed the above statement and (s)he duly acknowledged to me that (s)he executed same.

_____
Notary Public

Example 3

Date: _____

Dear Member:

You may elect to receive your pension under one of the following Options:

/_/ LIFE ONLY OPTION Under this option, a monthly pension is payable during your lifetime only, up to and including the month in which you die. All pension benefits will cease at your death.

/_/ 50% JOINT AND SURVIVOR OPTION You may elect this option only if you have a spouse as defined in the Plan. Under this option, a reduced monthly pension (less than the amount payable under the Life Only Option) is payable during your lifetime. If your spouse is still living at the date of your death, 50% of your reduced pension will be payable during your spouse's lifetime.

/_/ 75% JOINT AND SURVIVOR OPTION You may elect this option only if you have a spouse as defined in the Plan. Under this option, a reduced monthly pension (less than the amount payable under the 50% Joint and Survivor Option) is payable during your lifetime. If your spouse is still living at the date of your death, 75% of your reduced pension will be payable during your spouse's lifetime.

/_/ 100% JOINT AND SURVIVOR OPTION You may elect this option only if you have a spouse as defined in the Plan. Under this option, a reduced monthly pension (less than the amount payable under the 75% Joint and Survivor Option) is payable during your lifetime. If your spouse is still living at the date of your death, 100% of your reduced pension will be payable during your spouse's lifetime.

/_/ TEN YEAR CERTAIN OPTION Under this option, a reduced monthly pension is payable during your lifetime. If you die before receiving 120 monthly payments, your beneficiary will receive the remainder of the 120 payments.

Contd...

Example 3

ELECTION OF OPTION

Applicant's Name _____ Soc. Sec. No. _____

Address _____
Street City State Zip

I acknowledge receipt of a statement explaining the Options available to me and showing the amount of monthly pension payable under each of the Options. I have read the provisions of the Plan relating to pension benefits and the Options available and hereby elect to receive my pension under the Option checked below (Check Only One):

( ) Life Only Option,

( ) 50% Joint and Survivor Option,

( ) 75% Joint and Survivor Option,

( ) 100% Joint and Survivor Option,

( ) 10 Year Certain Option

I understand that when I begin receiving benefits under the Option I have elected, I may not thereafter change or rescind the Option throughout my lifetime or the lifetime of my spouse, except as may otherwise be provided in the Plan as it may from time to time be amended.

I understand that if I am married at my benefit commencement date and have elected some Option other than a Joint and Survivor Option, my spouse is required by law to sign the Spousal Consent below before a Notary Public.

Date: _____ Applicant's Signature _____

Signature of Witness _____

Note: Applicant's signature must be witnessed by an adult not related to the Applicant.

IMPORTANT: Your spouse must sign the Spousal Consent below before a Notary Public if you are married at your benefit commencement date and you have elected some Option other than a Joint and Survivor Option.

SPOUSAL CONSENT:

I understand that my spouse has elected NOT to receive a pension in the form of a Joint and Survivor Option and that the optional form of payment elected by my spouse will NOT provide me with a continuing pension for my lifetime after my spouse's death. I acknowledge receipt of an explanation of each of the Options available to my spouse and I understand that my spouse's election will not be effective unless I consent to it in writing. By signing this form I hereby consent to my spouse's election of a form of payment other than a Joint and Survivor Option.

Date: _____ Spouse's Signature _____

State of)
:ss
County of)

On this _____ day of _____, 19__, before me personally came _____, to me known and known to me to be the individual who executed the foregoing Spousal Consent and acknowledged to me that he/she executed the same.

_____
NOTARY PUBLIC

Rev. 2/85

Readability of Spousal Consent Forms

Table IV.1: Reading Difficulty of Spousal Consent Forms as Measured by the Flesch Formula

Degree of difficulty (N=106)[a]	Comparable reading material[b]	Flesch score	Percent of forms
Very difficult	Standard auto insurance policy	1–30	4
Difficult	Wall Street Journal	31–50[c]	52
Fairly difficult	Time (magazine)	51–60	38
Plain English	Reader's Digest	61–70	7
Fairly easy	Movie Screen (magazine)	71–80	0
Easy	Magazine ads	81–90	0
Very easy	Comics	91–100	0
Total			**100[d]**

[a]The number of spousal consent forms randomly selected by GAO for content and readability analyses.

[b]Rudolph Franz Flesch, How to Write Plain English: A Book for Lawyers and Consumers (New York: Harper & Row, 1979), pp. 25-26.

[c]A score of 40 or higher is used by the National Association of Insurance Commissioners as the cut-off defining readable insurance forms.

[d]Column does not add to 100 due to rounding.

Table IV.2: Reading Grade Level of Spousal Consent Forms as Measured by the Flesch-Kincaid Formula

Grade level	Percent of forms (N=106)[a]
8	2
9	7
10	10
11	17
12	22
13	14
14	12
15 plus	16
Total	**100**

[a]The number of spousal consent forms randomly selected by GAO for content and readability analyses.

Table V.2: Reading Grade Level of SPDs as Measured by the Flesch-Kincaid Formula

Grade level	Percent of SPDs (N=106)[a]
8	4
9	4
10	9
11	26
12	14
13	15
14	9
15 plus	19
Total	**100**

[a]This is the number of SPDs randomly selected by GAO for readability analyses.

-2-

Mr. Lawrence H. Thompson

may be made, however, it is not clear that language could be developed that would be widely applicable to a large number of employers. The Service will consider the feasibility of providing such language.

We hope you find these comments useful.

Best regards.

Sincerely,

Fred T. Goldberg, Jr.

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Related GAO Products

Private Pensions: Impact of Vesting and Minimum Benefit and Contribution Rules in Top-Heavy Plans (GAO/HRD-90-4BR, Oct. 23, 1989).

Private Pensions: Plan Provisions Differ Between Large and Small Employers (GAO/HRD-89-105BR, Sept. 26, 1989).

Retirement Income: 1984 Pension Law Would Help Some Widows but Not the Poorest (GAO/HRD-88-77, July 11, 1988).

Pension Plans: Vesting Status of Participants in Selected Small Plans (GAO/HRD-88-31, Oct. 30, 1987).

Pension Plans: Many Workers Don't Know When They Can Retire (GAO/HRD-87-94BR, Aug. 12, 1987).

Plans Experiencing Problems With Spousal Consent Forms

One of our questionnaire items requested opinions from plan administrators on problems implementing the Retirement Equity Act's spousal consent requirement. Overall, our analyses indicate that the administrators did not experience many problems. However, it is premature to draw conclusions because plans may not experience these problems for several more years. At the time of our questionnaire, the plans had been implementing the spousal consent requirement for only 3 years. Problems, such as falsifying marital status, may not appear until more time has passed. Our questionnaire results are summarized in table VII.1.

Table VII.1: Percentage of Plans Experiencing Problems With Spousal Consent Forms

	Percent of plans experiencing problems		
Problem	**Very/somewhat often (N=3,797)[a]**	**Rarely/never**	**Don't know**
Participants falsifying their marital status	1	76	23
Difficulty verifying participant's marital status	5	87	8
Separated spouses refusing to sign the form	8	80	12
Participants forging their spouses' signatures	1	61	38
Difficulty locating spouses	7	84	9
Married couples disagreeing about signing the form	4	64	32
Spouses having difficulty understanding the form	8	74	18

[a]This is the estimated number of pension plans in our selected universe. This estimate is derived from the 400 plans that answered this question.

Comments From the Internal Revenue Service

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

13 OCT 1989

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Washington, DC 20548

Dear Mr. Thompson:

This is in response to your letter dated August 9, 1989, concerning your draft report PRIVATE PENSION PLANS: Spousal Consent Forms Hard to Read and Lack Important Information.

Your report recommends that IRS require employers to provide more understandable spousal consent forms to the spouses of retiring workers. In particular, you suggest that these consents should contain specific information and explanations regarding the options for payment of the worker's pension. In addition, the report recommends that IRS develop model language to assist employers in the drafting of information contained in such a form in nontechnical language.

The statute currently requires that plans provide each participant with a written explanation of the plan's qualified survivor annuity. For plan years beginning after 1988, the regulations require that participants be furnished information on relative values of the optional forms of plan benefits. The statute does not specify what information must be provided to spouses of retiring participants who must consent to the benefit election. To assure an informed consent, we agree that plans should do more to provide basic, understandable information on survivor benefits to a spouse who must consent to the survivor benefits elected by the participant upon retirement. We will continue to look at what further guidance can be issued under the statute.

Publication of model language for use by employers in drafting spousal consent forms could prove helpful in many cases. Given the variety of forms in which benefit payments

Readability of Summary Plan Descriptions

For workers and possibly spouses, summary plan descriptions are another source of information on joint and survivor annuities and other types of benefit payments offered by the plan. Internal Revenue Service and Department of Labor regulations require employers to provide workers with SPDs written in nontechnical language to communicate pension plan information. Neither the law nor the regulations require that spouses receive SPDs.

We used readability formulas on appropriate sections from the plan descriptions to see if understandable information regarding the J&S annuity was given there. We found that over half of the sections in SPDs that we assessed scored difficult to read (see tables V.1 and V.2). Thus, SPDs are unlikely to help fill the void created by poorly written spousal consent forms and the lack of formal counseling.

Table V.1: Reading Difficulty of SPDs as Measured by the Flesch Formula

Degree of difficulty	Comparable reading material[a]	Flesch score	Percent of SPDs (N=106)[b]
Very difficult	Standard auto insurance policy	1–30	7
Difficult	Wall Street Journal	31–50[c]	47
Fairly difficult	Time (magazine)	51–60	41
Plain English	Reader's Digest	61–70	5
Fairly easy	Movie Screen (magazine)	71–80	1
Easy	Magazine ads	81–90	0
Very easy	Comics	91–100	0
Total			**100[d]**

[a]Rudolph Franz Flesch, How to Write Plain English: A Book for Lawyers and Consumers (New York: Harper & Row, 1979), pp. 25-26.

[b]The number of SPDs randomly selected by GAO for readability analyses.

[c]A score of 40 or higher is used by the National Association of Insurance Commissioners as the cut-off score defining readable insurance forms.

[d]Column does not add to 100 due to rounding.

Example 4

REJECTION OF AUTOMATIC POST-RETIREMENT SURVIVING SPOUSE BENEFIT

_____

Participant's Name _____

Social Security Number _____

Under the provisions of the Pension Plan, upon commencement of your retirement benefits, and if you have then been married for at least one year unless you specifically reject it in writing below, such benefit will be in the form of a "Contingent Annuitant" option, to provide to your surviving spouse, at the time of your death, a benefit for the duration of your spouse's life, in the amount of 50% of the benefit then being paid to you, and such benefit, at commencement, shall be actuarially reduced, to be actuarially equivalent to the "Standard Monthly Pension Benefit."

I have read and understand the above and hereby reject the Automatic Post-Retirement Surviving Spouse Benefit provision.

Signature _____ Date _____

Spouse Signature _____ Date _____

Example 3

- 2 -

Following are the amounts of monthly pension payable under each of the options available to you, based on contributions made to the Fund on your behalf through_____. The amounts shown are for the type of pension benefit checked below:

/_/ NORMAL or DEFERRED RETIREMENT PENSION beginning after Age 65.

/_/ EARLY RETIREMENT PENSION beginning at age _____.

Option	Amount of Monthly Pension Payable	
	During Your Lifetime	To Spouse or Beneficiary After Your Death
Life Only		None
50% Joint and Survivor		
75% Joint and Survivor		
100% Joint and Survivor		
Ten Year Certain		

Enclosed is an Election of Option form and a Designation of Beneficiary form. Please complete and return both forms IMMEDIATELY in order not to delay commencement of benefits.

If you are married, and you elect an Option other than a a Joint and Survivor Option, your Spouse must also sign the Election of Option form before a Notary Public consenting to the election. If you are married and fail to complete and return the Election of Option form within three (3) months of the date of this letter, you will be deemed to have elected a 50% Joint and Survivor Option and you will automatically be paid benefits under the 50% Joint and Survivor Option.

NOTE: A married person is one who is married at the date benefits begin. The term "married" includes common-law marriage and a person who is separated but not divorced.

Please contact the Pension Fund office if you have any questions.

Sincerely,

Rev. 1-1-85

Example 2

PENSION OPTION
FINAL APPLICATION

Date:_____

In accordance with federal law, our plan provides that the monthly pension payable to a married participant must be in the form of an actuarially reduced Automatic Husband and Wife Option **unless** the participant elects the full straight-life pension and the spouse agrees.

The figures below will help you make a choice. The amounts are subject to verification of your spouse's age, and evidence of your marriage.

AUTOMATIC HUSBAND & WIFE OPTION:

If you elect this option, you will be paid $_____ per month for life. After your death, $_____ will be paid monthly to your spouse for as long as he or she lives after you (if your spouse dies before you, there are no further monthly pension payments after your death). To qualify for this option, you must have been legally married to your spouse throughout the 12 month period immediately prior to your pension effective date.

STRAIGHT-LIFE PENSION

If you elect this type of pension, you will be paid $_____ per month for life and the final payment on your behalf will be due for the month in which you die.

Indicate your choice in the place provided on the back of this form and mail one copy PROMPTLY to the Fund Office. If we do not hear from you within 90 days, your pension will be reduced for the Husband and Wife Option.

_____
For the Board of Trustees

_____
_____
_____

Example 1

Option 1 ( ) 100% Joint & Survivor. I elect to receive a reduced retirement allowance payable during my life, and upon my death the same amount will be continued to my contingent annuitant.

Option 2 ( ) 50% Joint & Survivor. I elect to receive a reduced retirement allowance payable during my life, and upon my death one-half of my reduced retirement allowance will be payable to my contingent annuitant.

Option 3 ( ) Other. I elect to receive a reduced retirement allowance payable during my life with some other benefit payable after my death; provided that the benefit is approved by the Retirement Board.
Description of Option 3: _____

_____

_____

_____

The contingent annuitant whom I designate to receive the benefits at my death under Option 1, 2, or 3 follows:

Name _____ Sex _____ Birthdate _____
(submit evidence)

Soc. Sec. No. _____ Relationship _____

Address _____

_____

Please mail checks to me at:

_____ _____
Signature of Member Date

_____ _____
Signature of Witness

THE FOLLOWING STATEMENT MUST BE SIGNED BY SPOUSE IF YOU DO NOT ELECT YOUR SPOUSE AS BENEFICIARY AND YOU RESIDE IN ARIZONA, CALIFORNIA, IDAHO, LOUISIANA, NEVADA, NEW MEXICO, TEXAS, OR WASHINGTON (State).

I agree to the above election. _____
Signature of Spouse Date

_____
Signature of Witness

Spousal Consent Forms Used by Companies Surveyed

The following are examples of spousal consent forms used by four large pension plans participating in our survey. The readability scores of these forms as measured by the Flesch and Flesch-Kincaid formulas are shown in table III.1.

Table III.1: Readability and Language Difficulty of Spousal Consent Forms

Example	Flesch score[a]	Flesch-Kincaid score[b]
1	47	12th grade
2	70	8th grade
3	54	11th grade
4	2	greater than 15th grade

[a]The Flesch formula gives a readability score between 0 and 100, with the lower score indicating more difficulty. (See table IV.1 for Flesch scale.)

[b]The Flesch-Kincaid formula estimates the number of years (or grade) of education necessary to understand written material. (See table IV.2 for Flesch-Kincaid scale.)

Tables Providing Analyses of Questionnaire Items and Spousal Consent Form Content

Table II.1: Workers Offered Formal Retirement Counseling in 1986

Workers offered counseling	Percentage of plans (N=3,852)[a]
Most or all	41
Some	11
None	42
Don't know	5
Total	**100[b]**

[a]The estimated total number of pension plans responding from the universe. This estimate is derived from the 405 plans that answered this question.

[b]Column does not add to 100 due to rounding.

Table II.2: Plans With Formal Retirement Counseling That Invited Spouses and Proportion of Spouses Attending

	Percentage of plans (N=2,022)[a]
Spouses invited to counseling	76
Spouses attending:[b]	
All or nearly all	24
Most	23
About half	11
Some	29
None or almost none	8
Don't know	7
Total	**100[c]**

[a]The estimated number of pension plans responding from the universe. This estimate is derived from the 219 plans that offered formal counseling.

[b]These percentages are based on the estimated number of administrators who reported that spouses were invited to counseling (N=1,532).

[c]Column does not add to 100 due to rounding.

Methodology Used in GAO's Review

The Retirement Equity Act of 1984 requires GAO to study the effect of changes in federal pension legislation on women and report its findings to five congressional committees. Our principal objectives for this review were to determine if (1) the consent forms that spouses must sign explain the survivor benefit and the consequences of not selecting it and (2) the information in the forms is presented in a way that most people understand.

In March, 1988, we sent a questionnaire to plan administrators of a stratified random sample of 550 private sector defined benefit plans with 1,000 or more participants. These are plans that typically pay retirees monthly pensions based on their salary history and years of service with the company. Our sample was stratified by plan size. We asked for plan data, spousal consent forms, and summary plan descriptions (SPDs). Our overall response rate was 82 percent.

We drew our sample from IRS's computerized file of Annual Returns/Reports of Employee Benefit Plans submitted in 1984 by pension plan administrators. This was the most recent data available. Our results represent the approximately 3,900 defined benefit plans with 1,000 or more participants that submitted the annual return in 1984.

In addition, we randomly selected a subsample of 106 plans, evaluating their spousal consent forms and relevant sections of their SPDs. We analyzed information contained in the consent forms that described the terms of the joint and survivor annuity and the consequences of not selecting it. Specifically, we determined whether the forms explained that:

- the consequences of rejecting the J&S annuity generally are that spouses give up their rights to lifetime survivor benefits,
- the monthly amount of the J&S annuity would be lower compared with the selection of a single-life annuity unless the plan fully subsidized the J&S annuity benefit,
- the spouse's survivor benefit would be a certain percentage of the worker's pension, and
- each of the different benefit options provided different dollar amounts to the couple.

To analyze the readability of the 106 consent forms and selected sections of the SPDs, we used two computerized readability formulas: the Flesch formula and the Flesch-Kincaid formula. These formulas determine the level of reading difficulty by measuring the number of words

Example 3 27
Example 4 30

Abbreviations

GAO	General Accounting Office
IRS	Internal Revenue Service
J&S	joint and survivor
REA	Retirement Equity Act of 1984
SPD	summary plan description

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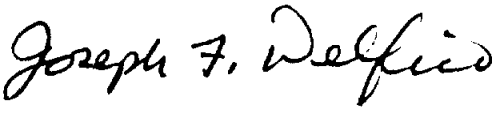
request. If you have questions about this report, please call me on (202) 275-6193. Other major contributors are listed in appendix VIII.



Joseph F. Delfico
Director, Income Security Issues

indented single column is easier to read than a wide single column, according to our consultant.

The size of type used by the 30 forms fell in the acceptable range, although many used type at the smaller end of the range. Also, most of the forms used all capitals for headings. Text in all capitals uses 30 percent more space and reduces reading speed by about 13 percent.

Summary and Conclusion

REA added the requirement that retiring married workers who decide not to give their spouses lifetime survivor benefits must get their spouses' written consent. Based on our review of the spousal consent forms used by some of the nation's largest pension plans, many spouses, as well as retiring workers, will have trouble understanding the forms they are asked to sign. These forms are often incomplete, unclear, and poorly designed.

Many spousal consent forms did not, in our opinion, contain clear and sufficient information regarding the terms of the J&S annuity and the impact of not selecting it. Even though spouses may have access to other information about the financial consequences of giving up their survivor benefits, the consent form is the only pension document they must receive when workers do not select the J&S annuity. As such, we believe the consent forms should be clearly written and contain all relevant information that spouses need to make an informed decision.

Recommendation

We believe that employers should be required to give pension benefit information directly to the spouses of retiring workers. This would better inform spouses of the terms of the J&S annuity and the consequences of not selecting it. Therefore, we recommend that the Commissioner of Internal Revenue issue guidance on the content of spousal consent forms.

Specifically, IRS should require employers to provide consent forms that explain in nontechnical language the terms of the J&S annuity, as well as other payment options, and the consequences of not selecting the annuity. This includes: (1) stating the spouse's monthly survivor benefit as a percentage of the retiree's monthly amount, (2) explaining that the retired worker's monthly annuity will be less if the J&S annuity is selected instead of the single-life annuity, (3) clearly communicating the consequences of rejecting the J&S annuity, and (4) communicating the relative financial effect on a worker's pension benefit if the J&S annuity

Consent Forms Often Have Language and Design Problems

While a poor readability score usually means a document is difficult to read, the converse is not always true. A document with a good readability score may still have serious problems that impair comprehension. A GAO document design consultant reviewed 30 spousal consent forms and found they all had language or design problems, regardless of their readability score. The forms could be improved to make them easier to understand and use.

Language Problems Often Found

Generally, the 30 spousal consent forms had serious language problems, including double negatives, passive voice, and jargon. Excerpts from spousal consent forms and plain English alternatives appear in table 1.

Table 1: Language Problems Found in Spousal Consent Forms

Actual wording of consent form	Plain English alternative
Double negative:	
I understand that my spouse's election will not be effective unless I consent to it in writing.	I understand that my spouse's choice requires my written consent.
unless you elect not to receive it in such a form.	unless you choose another form.
Passive voice:	
I understand and agree that if this option is elected by me	I understand and agree that if I elect this option
in the amount of 50% of the benefit then being paid to you	in the amount of 50% of the benefit you have been receiving
Jargon:	
if the retiring Participant shall be married at the time of his/her annuity starting date	if you are married when your pension starts
I understand and hereby consent to the election made by my spouse.	I understand and agree to my spouse's choice.
I understand that I am waiving my right to receive a survivor benefit	I understand that I am giving up my right to a lifetime survivor benefit
Specifically this means that if you elect Option B or Option C with someone other than your spouse named as the Contingent Annuitant, your spouse must sign the waiver in Section III below.	Under Option B or Option C, if you name someone other than your spouse to receive survivor benefits, your spouse must sign the agreement below.
and hereby consent to the form of benefit (i.e., option) elected and Contingent Annuitant named under the Plan by my spouse.	and consent to the form of payment chosen and the person named by my spouse to receive the survivor benefits.

Examples of differences in how forms explained the terms of the J&S annuity follow. Some were clearer:

"50% Joint and Survivor Option . . . . Under this option, a reduced monthly pension (less than the amount payable under the Life Only Option) is payable during your lifetime. If your spouse is still living at the date of your death, 50% of your reduced pension will be payable during your spouse's lifetime." (See example 3 in app. III.)

Explanations of Rejecting the J&S

Spousal consent forms varied in how they explained the consequences of rejecting the J&S annuity. For example, spouses reading the following acknowledgement-of-effect statement (i.e., description of the consequences of rejecting the J&S annuity) from one company's spousal consent form may mistakenly think they will get monthly payments after the retired worker dies although the money is not guaranteed.

"I understand that my spouse has chosen a form of payment that does not guarantee me a lifetime survivor benefit after his or her death, and I consent to the election."

In contrast, other acknowledgment statements in the consent forms were much more explicit:

"I, _____, am the legal spouse of the participant above. I hereby consent to my spouse's rejection of the Husband and Wife Option.[2] I understand I will not receive a pension from this Plan after the death of my spouse." (See example 2 in app. III.)

Some forms asked spouses merely to agree with the worker's selection and did not directly relate the consequences of rejecting the J&S annuity to the spouse as was done in the previous examples. As an illustration, if a married man signing the spousal consent form in example 1 of appendix III decided to reject the J&S annuity, he would check the third box on page one, which states:

"I am married and I elect to receive a retirement allowance that stops at my death."

His wife must sign the following statement found on the bottom of page two:

"I agree to the above election."

To understand the consequences of her decision, she must read the entire form and evaluate the four other options that were available to her husband.

For more than 40 percent of the forms, the statement preceding the spouse's signature either did not explain the consequences of rejecting the J&S annuity or explained them only partially. To understand fully the consequences in these cases, spouses must search through the form to determine the significance of their decisions. For 57 percent of the forms, the statement that described the consequences of rejecting the J&S

[2]In this case the Husband and Wife Option refers to a J&S annuity.

Security Act of 1974. Under this authority, Labor has issued regulations governing the content and readability of summary plan descriptions.

However, neither the law nor regulations state the type of information that must be given to the spouses of retiring workers to meet the legal requirement that spouses consent to and acknowledge the effect of not selecting the J&S annuity. Because of this lack of guidance, pension plan administrators have some discretion in how their spousal consent forms describe the terms of the J&S annuity and the effect of rejecting it.

Spousal Consent Forms Are an Important Information Source

Spousal consent forms are important to workers as well as spouses. For many plans in our survey, the spousal consent form was part of the workers' retirement application. In addition, consent forms are important because many plans did not provide retirement counseling to retiring workers and their spouses.

We found that 68 percent of the spousal consent forms also served as retirement applications that listed the various payment options, including the J&S annuity, and required the worker's signature to indicate which payment option was selected. Also, one-fourth of the forms required the spouse's signature regardless of the payment option selected by the worker.

The spousal consent form can also be a crucial source of information for those spouses and workers who do not attend formal counseling. Administrators responded that formal counseling was not offered to workers in 4 of 10 plans, and offered to only some workers in about 1 of 10 plans (see table II.1). Even when counseling was offered, spouses frequently did not attend. Less than one-half of the plans (47 percent) that invited spouses to counseling reported that most or all of the spouses attended (see table II.2).

In fact, our analyses show that plan administrators most frequently singled out the consent form as the predominant way spouses learned about the J&S annuity. Even though spouses may have access to information given to workers, the spousal consent form is the only pension document spouses must receive. The form was also cited by about one-fourth of the plan administrators as the predominant way workers learned about the J&S annuity (see table II.3).

lifetimes, if longer. Before REA, only 17 percent of large private-sector pension plans had a written consent requirement, according to our analyses.

This report is one in a series addressing REA's mandate that GAO study the effect of changes in federal pension legislation on women and report to five congressional committees. Our principal objectives for this review were to determine if (1) consent forms explain the survivor benefit and the consequences of not selecting it and (2) information is presented in a way that most people can understand. Our review did not evaluate consent forms to determine if eligible spouses actually signed them. This letter describes our analyses and conclusions based on our survey of administrators of 550 large pension plans (i.e., plans with 1,000 or more participants) and our review of 106 of their spousal consent forms (see app. I for the methodology we used).

Results in Brief

Consent forms are an important source of information about survivor benefits for spouses as well as workers. These forms are important especially because many pension plan administrators (42 percent) reported that their companies did not provide workers nearing retirement with formal counseling and even fewer counseled spouses.[1] Also, plan administrators we surveyed frequently singled out the consent form as the predominate way spouses and workers learned about survivor benefits.

Despite their importance, many of the forms we reviewed did not present all the information that we believe spouses should have to make an informed decision about the survivor benefit option. Moreover, in our opinion, the consent forms appeared to be too difficult for many spouses of retiring workers to read and understand.

Currently, Internal Revenue Service (IRS) regulations do not specify the information employers must give spouses of retiring workers to meet the legal requirement that spouses must consent to and acknowledge the effect of the worker's decision to reject the survivor benefit option. We believe IRS should require employers to provide spouses with clearly written consent forms that explain the terms of the various pension benefit options and the consequences of rejecting the survivor benefit.

[1]Formal retirement counseling refers to group or individual face-to-face meetings initiated by a pension plan official or employer and held before retirement forms are actually signed. "Drop-in" meetings initiated by the employee were not considered as formal counseling.