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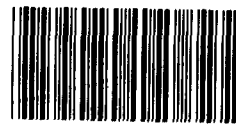
United States General Accounting Office

Report to the Chairman, Subcommittee
on Retirement Income and Employment,
Select Committee on Aging,
House of Representatives

December 1991

PRIVATE PENSIONS

IRS Efforts Underway to Improve Spousal Consent Forms



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Human Resources Division

B-234452

December 20, 1991

The Honorable William J. Hughes
Chairman, Subcommittee on Retirement
Income and Employment
Select Committee on Aging
House of Representatives

Dear Mr. Chairman:

This report responds to your request for a follow-up study to our 1989 report on the need for informative and understandable spousal consent forms for private pension plans.¹ Employers use these forms to obtain a spouse's written approval when a married retiring worker decides not to provide his or her spouse with a survivor benefit. In the previous report, we recommended that the Commissioner of Internal Revenue require employers to provide certain information on pension benefits directly to spouses on consent forms. We also recommended that the Commissioner develop examples of understandable, nontechnical language for presenting the information. The Internal Revenue Service (IRS) generally agreed with our recommendations.

This report discusses IRS's progress in implementing our 1989 recommendations. As agreed with your office, we also explored whether it would be useful to further require that the forms disclose the consent decision's voluntary nature and revocability.

Results in Brief

Since 1989, IRS developed two information booklets in an effort to inform spouses about survivor benefits, but had not yet required employers to include the information we recommended on spousal consent forms or developed nontechnical language examples. In December 1991, however, in response to our inquiries, IRS initiated a project aimed at changing its regulations. The regulations would require that the forms contain the needed information—including the survivor benefit's estimated dollar amount and the consequences of waiving the benefit. IRS also initiated actions to develop language examples.

In our view, consent forms should also disclose (1) that the spouse's decision to waive survivor benefits is voluntary and (2) whether a spouse has the right to revoke an earlier decision. This information

¹Private Pensions: Spousal Consent Forms Hard to Read and Lack Important Information (GAO/HRD-90-20, Dec. 27, 1989).

would further help spouses to make well-informed decisions about survivor benefits. IRS agreed to consider requiring this information on consent forms in its regulations.

Background

Recognizing marriage as an economic partnership, the Congress instituted the spousal consent requirement to protect spouses' access to survivor benefits. Under the Retirement Equity Act (REA) (P.L. 98-397), employers must obtain written consent from spouses of retiring workers who choose pension benefits payable during their lifetimes, but not during their surviving spouses' lifetimes. This requirement was established after widows testified during congressional hearings that their husbands, without consulting them, chose pension options that paid higher benefits during the husbands' lifetimes, but did not provide continuing benefits to the widows.

Under REA, a married worker's decision not to take a survivor benefit 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 survivor benefit.² Generally, the effect of rejecting the benefit is that the spouse will not receive pension benefits after the worker dies.

The spousal consent form is an important source of information because it is the only pension document that spouses must receive when consenting to waive survivor benefits. Therefore, the form represents the best mechanism to ensure that the spouse possesses sufficient knowledge of the economic effects of his or her decision.

Unless the spouse signs the consent form, employers offering a pension in the form of annuities (monthly payments) must automatically provide, at a minimum, a 50-percent joint and survivor (J&S) annuity to a retiring married worker. With this annuity, if the retiree dies before the spouse, the spouse gets a pension amount equal to half of what the retiree received during his or her lifetime. For example, if a retiring married worker receives \$800 a month in pension income from a 50-percent J&S annuity, the surviving spouse would receive \$400 a month after the worker's death.

²See Section 417 (a)(1) through (3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 417 (a)(1) through (3)) and Section 205 (c)(1) through (3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1055 (c)(1) through (3)). These provisions generally became effective for plan years beginning after December 31, 1984.

IRS is responsible for issuing regulations implementing the spousal consent provision in REA. These regulations are subject to approval by the Department of the Treasury and may be reviewed by other executive branch agencies, such as the Department of Labor and Office of Management and Budget. IRS is also responsible for determining if plan provisions, including those for 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 (1) meet the minimum 50-percent J&S annuity requirement and (2) require written spousal consent when the annuity is not selected.

For our 1989 report, we evaluated 106 spousal consent forms for defined benefit plans³ and found that many forms were deficient in two areas. First, spousal consent forms did not include sufficient information to enable spouses to make well-informed decisions about survivor benefits. Second, the information that was included was not presented in a manner that could be easily understood.

We recommended that IRS require employers to provide consent forms that explain the terms of the J&S annuity, as well as other payment options, and the consequences of not selecting the J&S annuity. This information should clearly state (1) the spouse's monthly survivor benefit as a percentage of the retiring worker's monthly amount; (2) that the worker's monthly annuity will be less if the J&S annuity is selected, instead of a form of benefit that only pays him or her a lifetime benefit (that is, a single-life annuity); (3) the consequences of rejecting the J&S annuity; and (4) the relative financial effect on a worker's pension benefit if the J&S annuity is selected (for example, providing the different estimated monthly dollar amounts the couple and surviving spouse would receive under various payment options offered by the pension plan).

We also recommended that IRS develop simple nontechnical language for employers to use in spousal consent forms. This would aid employers in presenting important information in understandable language.

³Workers in such plans receive a fixed benefit at retirement, generally based on a predetermined formula. By contrast, in a defined contribution plan, workers receive a benefit based on contributions and earnings accumulated in their individual accounts.

Scope and Methodology

To evaluate IRS's actions taken on our recommendations, we asked the Assistant Commissioner for Employee Plans and Exempt Organizations to provide us with detailed information on the agency's progress in meeting those recommendations. In addition, we interviewed an IRS tax law specialist for employee plans who has responsibility for a project on spousal consent forms that IRS has been conducting. We also obtained and reviewed two IRS publications (issued March 1991) on retirement benefits that were generated in response to our recommendations.

We reviewed applicable laws, legislative history, and regulations to determine the merits of adding the items regarding the voluntary nature of the consent and revocability on spousal consent forms. We also reviewed other literature and interviewed IRS officials to determine the importance of this information. Finally, we collected and reviewed the most recent spousal consent forms for pension plans used in our 1989 report to identify the extent to which these two items were discussed.

We conducted our review between January and August 1991 in accordance with generally accepted government auditing standards.

IRS Issued Information Booklets, but Regulations and Language Examples Not Developed

As a direct result of our 1989 recommendations, IRS published two booklets entitled Looking Out for #2: A Married Couple's Guide to Understanding Your Benefit Choices At Retirement.⁴ The publications describe how various pension laws work to protect spousal benefits. Regarding survivor benefits, the booklets contain a general explanation of the terms of the J&S annuity and other options that might be available. The booklets include a statement that the spouse's monthly benefit will be a percentage of the retiring worker's monthly amount. Finally, the booklets explain that the worker's annuity will be less if the J&S annuity is selected instead of the single-life annuity.

In our view, publishing a booklet, which individuals must obtain themselves, in lieu of regulations, which make the disclosure of information mandatory, did not ensure that the spouse of a participant would become informed of his or her rights under REA. Without requiring that important information be disclosed on the spousal consent form, there is no other viable mechanism available to ensure that spouses become informed of their rights, which allows them to execute a knowing and voluntary decision.

⁴IRS issued one booklet for defined benefit plans and the other for defined contribution plans.

Regarding our second recommendation, IRS had not provided employers with specific nontechnical language to be used in spousal consent forms. IRS believed that the information to be conveyed in forms was not amenable to specific language because of the variety of retirement plans and options available.

Building on the work done in our 1989 report, we obtained several consent forms, written in understandable language, that further demonstrate the feasibility of developing language examples. The forms were designed by a private organization that provides information on laws and regulations relating to retirement benefits. The language in these forms clearly states the retirement rights and benefits of workers and their spouses under the law regardless of the type of retirement plan offered. For example, two forms offering different options for retirement payments use identical spousal consent statements.

In addition, we found that Labor, which is responsible for reviewing summary plan descriptions and issuing regulations governing the information in them, has developed language examples for employers to use in these descriptions and included this language in its regulations. The regulations provide that if this language is used in a summary plan description, it would be in compliance with the regulations.

IRS Agrees to Initiate Projects to Improve the Information on Consent Forms

In November 1991, we discussed with IRS officials our continuing belief that it should issue regulations to require employers to include important information in consent forms and develop language examples. As a result, in December 1991, the agency initiated two projects. One project is aimed at developing regulations that would require employers to provide, among other things, the following information on spousal consent forms:

- the spouse's monthly survivor benefit as a percentage of the retiring worker's monthly amount,
- that the worker's monthly annuity will be less if the J&S annuity is selected instead of a single-life annuity, which pays only the worker a lifetime benefit,
- the consequences of rejecting the J&S annuity (that is, the spouse will not receive a lifetime benefit after the worker dies), and
- the relative financial effect on a worker's pension benefit if the J&S annuity is selected (for example, providing the different estimated

monthly dollar amounts the couple, compared with those for the surviving spouse, would receive under various payment options offered by the pension plan).

IRS's second project is aimed at developing language examples consistent with our 1989 recommendations. The agency now agrees that these examples could help employers to better communicate the information on spousal consent forms.

Additional Information Could Enhance Spousal Consent Forms

Beyond the corrections we recommended in 1989, we found that spousal consent forms would be more effective in helping spouses to make well-informed decisions if they disclosed two additional items: (1) that the spouse's decision to waive the J&S annuity is voluntary and (2) whether the specific plan permits revocation of the decision to waive the J&S annuity.

When the Congress passed REA, it intended that a spouse, as well as a retiring worker, be fully aware of the effect of the decision to waive survivor benefits, including the fact that the spouse's consent to the waiver is voluntary and the decision to consent may not be revocable. Under REA, a spouse must know that the decision whether to consent to a waiver of survivor benefits is voluntary, and that to refuse to consent would result in the spouse automatically receiving at least a 50-percent J&S annuity. Moreover, REA's legislative history shows that it was intended for spouses to know whether they have the right to revoke the decision to waive survivor benefits. The law, however, only requires that the worker be provided with this information; it does not specify how the information is to be provided. In addition, the law does not require that the worker or the employer share the information with the spouse.

In the absence of such a requirement, employers currently may not voluntarily include this information. For example, in reviewing 98 spousal consent forms,⁵ we found that only 9 of them included a statement concerning the revocability of the spouse's waiver.

IRS agreed that the issues of voluntary consent and revocability are important to spouses. In fact, the agency's booklets to married couples

⁵Of the 106 employers who provided us spousal consent forms used in our previous report, 8 of the companies could not be used in our current analysis because 5 were no longer in business, 2 no longer sponsored a defined benefit plan, and 1 had less than 1,000 participants. Our 1989 sample requirements were that the company sponsor a defined benefit plan and have 1,000 or more participants.

inform them that the pension plan has the option of permitting a spouse to revoke his or her decision and emphasizes that the spouse be especially careful in making this decision.

Accordingly, IRS has agreed to consider in its regulatory project provisions that would require spousal consent forms to disclose the voluntary nature of the consent decision and whether this decision can be revoked.

We did not obtain written comments from IRS on this report, but we did provide a draft copy to its officials and discussed the contents with them. Their comments have been incorporated where appropriate. Copies of this report are being sent to interested Congressional committees and subcommittees and to the Commissioner of Internal Revenue. We will also make copies available to others on request. If you have questions about this report, please call me on (202) 275-5365. Other major contributors are listed in appendix I.

Sincerely yours,



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