



AMERICAN BENEFITS COUNCIL

April 20, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
Washington, DC 20515

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Minority Leader Schumer:

We are writing to highlight an issue of increasing importance to families across the country. There is an acute need to update a rule requiring spousal consent to certain pension plan distributions to be witnessed in the **physical presence** of a plan representative or notary; such a physical presence requirement is directly contrary to the critical health needs of the country. **In fact, as discussed further below, for safety reasons, the Federal Thrift Savings Plan has just waived the requirement that spousal consent be notarized at all. Private-sector families deserve safety protections just like federal workers.**

To address this urgent need, we urge you to include the bipartisan Securing and Enabling Commerce Using Remote and Electronic Notarization Act (SECURE Notarization Act), in the next broad stimulus package. This legislation (S. 3533, H.R. 6364) has been introduced by Senators Cramer (R-ND), Warner (D-VA), Tillis (R-NC), Daines (R-MT), and Sinema (D-AZ), and by Representatives Reschenthaler (R-PA) and Dean (D-PA).

As you know, many families have lost some or all of their income due to layoffs, pay reductions, hour reductions, and business closures. In some cases, the only source of funds that families have to pay for the basics of life is their retirement savings.

Although we believe that retirement savings are for retirement, families who cannot pay daily bills have an overriding problem that must be addressed. Many of these families are asking for a lump sum distribution of their pension benefits. *In some cases, families who may desperately need their retirement benefits are being denied those benefits because they will not jeopardize their health by seeing a notary or plan representative in person.*

Under current law, spousal consent is required for a participant in a defined benefit plan to receive their benefit in a lump sum (or in certain other forms). In addition, current law requires spousal consents to be witnessed in the “physical presence” of a plan representative or notary. It is clearly dangerous and inappropriate to ask families to jeopardize their health to obtain funds that are so desperately needed.

Some are suggesting that unless a family jeopardizes its health by seeing a notary or plan representative in person, lump sum distributions to families should be limited to 10% of the total benefits the family is entitled to. It is hard to imagine trying to explain to a family in need why they need to jeopardize their health in order to obtain all the money that is owed to them and that they may desperately need.

States are recognizing this problem and are adopting updated procedures to permit electronic notarization, such as through videoconferencing with clear and strong safeguards.¹

Finally, and most powerfully, as noted, the Federal Retirement Thrift Investment Board just waived the notarization requirement entirely, citing both the need for safety and the need for pension distributions:

The coronavirus pandemic has disrupted day-to-day life in an unprecedented way. These disruptions, which include mandatory business and school closures, stay-at-home/shelter-in place orders, and quarantines have made it difficult and unsafe to have forms notarized in-person. ...

Under these conditions, the regulation requiring spousal consent to be notarized has become an extraordinary hurdle for married TSP participants who need to request a withdrawal during this difficult time. Therefore, the Executive Director has determined that is necessary to temporarily waive the notarization requirement for spousal consent.

Private-sector families need to be protected, just as Federal workers do. We are all in this together.

¹ See, e.g., <https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>;
http://sbog.informz.net/sbog/data/images/04.09.20.01_Notaries%20and%20Witnesses.pdf

We urge Congress to help private sector families as soon as possible. People need their savings, and they should not be forced to jeopardize their health to get those savings. The bipartisan bills would permit the use of electronic spousal consent, subject to stringent protections to ensure that the consent is entirely valid.

Thank you for your consideration of this issue.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive, flowing style.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: All members of Congress