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*Via Electronic Delivery*

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**RE: Use of an Electronic Medium to Make Participant Elections and Spousal Consents (RIN 1545-Bq50)**

For the last 47 years, the Pension Rights Center has been a leading consumer voice working to protect and promote the retirement security of workers, retirees, and their families. We appreciate that IRS/Treasury decided to use full notice-and-comment rulemaking and to hold a public hearing to obtain comments on its proposed rule,<sup>1</sup> and we welcome the opportunity to share our views. The Pension Rights Center opposes the elimination of the physical presence requirement for witnessing spousal consents; instead, the physical presence requirement should be retained, and the protections applicable to it should be further strengthened. However, if the agency decides to permit remote witnessing, safeguards far beyond what have been proposed are needed to adequately protect spousal rights to survivor benefits.

**I. The Physical Presence Requirement Is Central to the Statutory Scheme of Spousal Protections under ERISA**

For those workers who are fortunate enough to have accumulated a sizeable balance in an employer-based retirement savings plan, or to have earned a defined benefit pension, retirement benefits typically constitute one of the most valuable assets a married couple owns. Receiving monthly annuity income from a pension or withdrawing retirement savings from a 401(k)-type plan is critical to supplementing Social Security and maintaining a household's standard of living in retirement. Despite women's increased participation in the workforce and in employer-based plans, a gender gap in retirement income persists: women still receive lower pay than men, still spend more time out of the workforce to provide care for family, and are still generally more likely to work part-time or for small employers that don't offer a retirement plan. All these factors mean that women often reach retirement with far fewer retirement benefits and assets – yet they must make those assets last over longer life expectancies than men. Consequently, while spousal pension rights apply equally to

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<sup>1</sup> Use of an Electronic Medium to Make Participant Elections and Spousal Consents (RIN 1545-Bq50), 87 Fed. Reg. 80501 (proposed Dec. 30, 2022) (to be codified at 26 C.F.R. § 1.401(a)-21), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-12-30/pdf/2022-28327.pdf> [hereinafter *Physical Presence NPRM*].

women and men, in reality women are more dependent on spousal benefits for their retirement security than men,<sup>2</sup> making spousal pension rights primarily a women’s retirement security issue.<sup>3</sup>

The Retirement Equity Act of 1984<sup>4</sup> (REA) established that deferred compensation in the form of retirement benefits and savings are jointly earned marital assets, that decision-making about distributions should be made jointly, and that spousal rights to those assets demanded a framework whereby the rights of spouses to share in those benefits are protected. Upon the death of a married participant,<sup>5</sup> spouses must automatically receive at least a 50% surviving spouse pension in a defined benefit plan (or in some defined contribution plans that offer an annuity), and must be the named beneficiary of the balance in a 401(k)-style defined contribution plan. These rights to automatically receive benefits are legal defaults that can only be altered if the spouse knowingly and voluntarily consents to surrender them in writing before a notary or plan administrator. Unless there is a valid spousal consent, the participant may not choose a form of payment other than a qualified joint and survivor annuity, and may not name someone other than the spouse as the death beneficiary for a 401(k) balance.

Spousal consent to waive automatic retirement benefits for surviving spouses is the linchpin of statutory spousal protections, and Congress structured this protection in the way it did because it recognized that for several reasons, this decision, *this* ERISA election, is *different*.

First, in the case of surviving spouse benefits, the participant spouse and the nonemployee spouse have an actual conflict of interest – not a *potential* conflict of interest based on facts and circumstances, as posited in proposed §1.401(a)–21(d)(3), but rather an *inherent, structural, unremitting* conflict of interest. In a real estate sale, we recognize that the buyer and seller of property may agree to a transaction, but that doesn’t change the fact that there is always a conflict of interest between buyers and sellers: buyers paying less means sellers profiting less, and vice versa. In the same way, when it comes to waivers of surviving spouse benefits, leaving nothing for a spouse means more money for the participant (or a different beneficiary of the participant’s choosing). This is also why no spousal consent is needed when the surviving spouse pension is fully subsidized – if the provision of a surviving spouse pension doesn’t take any benefits away from the participant, there is no longer a conflict of interest. Moreover, the sizeable amount at issue can magnify that conflict of interest, and provide a significant incentive for the participant spouse to commit fraud or coercion to obtain the spouse’s consent.

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<sup>2</sup> See GAO, *Retirement Security: Older Women Report Facing a Financially Uncertain Future* 10 (July 2020), at <https://www.gao.gov/assets/gao-20-435.pdf>; National Women’s Law Center, *Increasing Spousal Protections in Retirement Accounts Would Increase Women’s Retirement Security*, n. 3 (Mar. 2014), at <https://nwlc.org/resource/increasing-spousal-protections-retirement-accounts-would-increase-womens-retirement-security/>; Pension Rights Center, *Understanding Survivor Benefits in Private Retirement Plans* (Nov. 2, 2020), at <https://www.pensionrights.org/resource/understanding-survivor-benefits-in-private-retirement-plans/>.

<sup>3</sup> For this reason, for ease of writing, we sometimes refer to the participant as “he/his” and the spouse as “she/her,” although spousal rights apply to both sexes and to same-sex marriages.

<sup>4</sup> Pub. L. 98-397, 98 Stat. 1426 (1984) (26 U.S.C. § 417; 29 U.S.C § 1055).

<sup>5</sup> The Pension Counseling Projects and private attorneys have told PRC that a common way in which married participants defraud their spouses out of a survivor benefit is simply to lie and tell the plan they are not married. Although this issue has nothing to do with the method of witnessing at issue in this rulemaking, it is reported frequently enough that IRS/Treasury should take steps to address it. For example, when a participant claims to be unmarried, plan administrators and employers should be required to exercise basic due diligence by reviewing other benefits elections (e.g., dependent health insurance), tax withholding paperwork, other beneficiary designations, emergency contact, etc.) to ensure they are consistent with the reported marital status.

Second, spousal consents are different because the threat of fraud or coercion is coming from *inside* the home of the beneficiary-spouse, not from some hacker or identity thief outside the home. The couple likely receives mail at same address, may use the same computer, and may even share passwords and PINs (personal identification numbers). These “opposing” parties also know a lot of personal information about each other, significantly limiting the utility of using traditional methods of ID verification like security questions as a fraud prevention tool. There is often also a power imbalance between the spouses. The fact that the source of fraud or coercion is within the marital household, where the opportunity for fraud, duress, or coercion is magnified, also makes it harder to detect, either at the time or even long afterward when the participant dies and the surviving spouse denies she consented, or that she did so knowingly and freely.

Third, spousal consent to surrender rights to retirement benefits are different because the interests that are at stake are huge, and largely irreplaceable. Whether a couple has significant retirement assets or a modest amount, what they have accumulated is often critical to helping ensure a more secure retirement. Ensuring continuation of a surviving spouse pension every month being able to draw from a pot of retirement savings can mean the difference between making ends meet or falling into poverty in widowhood. When this resource is gone, it’s gone – typically, it is too late for the surviving spouse to work to make up the losses or to be able to save anymore for retirement.<sup>6</sup> Funds drained while the participant is alive, sometimes in contemplation of divorce, are funds that will not be available to help support the spouse in retirement.

Finally, that spousal consents are different is exemplified by the fact that they are the only type of retirement election under ERISA that requires a third-party witness. At the time of the REA, getting something notarized meant appearing in person before someone in your community with official authority, and signing a document in front of them with a “wet” signature (affixed with pen on paper) that could later be authenticated if there was ever any question of forgery. It was reserved for only the most consequential legal documents. “The events that require notarization are rare occurrences in most people’s lives, and the consequences of a related fraud can be profound.”<sup>7</sup> Congress did not intend for renunciations of automatic spousal benefits to be quick and easy to execute. Congress knew that requiring the spouse to appear in person before a notary or plan administrator was an extra step, an intentional “inconvenience,” but one that slowed things down, required a second decisionmaker, and communicated the gravity of the decision and the document being witnessed, just by virtue of having to arrange for and appear before someone.

Remote online notarization laws have proliferated during the pandemic and are now on the books in most states, at least temporarily. Our objection is not to remote online notarization (RON) generally; our objection is to enabling its use for spousal consents – “...a transaction of unusual import and sensitivity, in which a spouse irrevocably gives up her or his rights to a lifetime pension [or

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<sup>6</sup> Spousal consents are typically executed around the time of retirement, a time when spouses are older and may be experiencing age-related health issues or even cognitive impairments. Requiring third-party witnessing for an election executed by an age demographic with a higher incidence of health issues is important to ensuring that spousal consents are understood, and that the consent is knowing and willing.

<sup>7</sup> Letter from Rob Bonta, Cal. Att’y Gen., to Sens. Dianne Feinstein & Alex Padilla, Re: Concerns with the SECURE Act (H.R. 3962) related to remote online notarization (RON), fraud, and preemption (Oct. 13, 2022), *available at* <https://oag.ca.gov/system/files/attachments/press-docs/Letter%20to%20Senators%20Feinstein%20and%20Padilla%20re%20Concerns%20with%20the%20SECURE%20Act%20-%20remote%20online%20notarization.pdf>.

accumulated retirement savings]. This raises unique risks and fundamental concerns relating to the need to protect older Americans in general, and widows in particular, from poverty, exploitation, and elder abuse.”<sup>8</sup>

## II. Elimination of the Physical Presence Requirement Is Arbitrary and Capricious

### A. The Sole Rationale for Elimination Long Ago Evaporated

During the last rulemaking on this issue in 2005-06, IRS/Treasury considered the use of electronic media for providing benefit notices on one hand, and making benefit elections and consent on the other.<sup>9</sup> It distinguished between the two, imposing stronger requirements on elections than notices. At that time, business groups urged IRS/Treasury to dispense with the physical presence requirement for executing spousal consents, and instead only to require spouses to use a separate PIN to sign a consent. The agency rejected that suggestion,<sup>10</sup> concluding that the physical presence requirement “coordinates with the authentication requirement because . . . [it] increases the likelihood that the electronic system is reasonably designed to preclude any person other than the appropriate individual from making the election.”<sup>11</sup>

In early 2020, it was understandable that IRS/Treasury permitted remote online notarization (RON) as a *temporary* measure to deal with a national public health emergency. The agency justified the temporary waiver of the physical presence requirement *solely* based on the distancing directives and lockdown restrictions imposed by COVID. Many businesses were shuttered, which precluded access to notaries, and individuals, especially older adults, wanted to avoid in-person contact with others. Before the end of 2020, most essential businesses like banks had reopened to in-person business, and by 2021, even businesses dependent on crowds like stadiums and theaters had reopened. Distancing had subsided and it became quite common for people to go without masks. Yet, the agency did not change its COVID-based rationale for the temporary suspension in any of its subsequent temporary extensions.<sup>12</sup>

### B. IRS/Treasury Has Offered No New Rationale

COVID as a rationale for temporarily abandoning a 40-year-old safeguard long ago lost its persuasiveness. To its credit, IRS/Treasury does not continue to assert that rationale to support its Proposed Rule here. Yet, the agency has not articulated any new rationale to support its proposal. The existence of a new technology, alone, is not a legally adequate rationale. Audio-video online interactions such as those made possible by Zoom are a noteworthy development, and it is understandable why, during a global pandemic, its ubiquity might be interpreted as a sufficient

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<sup>8</sup> Comments of David Certner, Legislative Counsel and Legislative Policy Director, AARP, to IRS, Re: Notice 2021-40, Extension of Temporary Relief from the Spousal Consent Physical Presence Requirement, at 2 (Dec. 22, 2021), available at <https://www.aarp.org/content/dam/aarp/politics/advocacy/2021/12/spousal-consent-aarp-comment-letter-122221.pdf> [hereinafter *AARP 2021 Comments*].

<sup>9</sup> IRS, *Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents*, Final Regulation, 71 Fed. Reg. 61877 (Oct. 20, 2006), available at <https://www.govinfo.gov/content/pkg/FR-2006-10-20/pdf/E6-17528.pdf> (Treas. Reg. § 1.401(a)-21(d)(6)) [hereinafter *2006 Final Rule*].

<sup>10</sup> *Id.*, preamble to final regulation, at 61882.

<sup>11</sup> *Id.*

<sup>12</sup> Notice 2020-42, 2020-26 IRB 986; Notice 2021-03, 2021-2 IRB 316; Notice 2021-40, 2021-28 IRB 15; and Notice 2022-27, 2022-22 IRB 1151.

substitute for in-person interactions. In fact, that seems to be the implicit argument here: we used remote witnessing during COVID, so we can and should continue to do so. But, there is now widespread agreement that online interaction is not the same as in-person interaction: not for students in school, not for employees at work, and not for interpersonal relationships between family members and friends. The existence of technology that enables remote notarization, or the fact it had to be used for short time due to COVID, does not itself justify its use for spousal consents.

The NPRM briefly summarizes the positions for and against eliminating physical presence,<sup>13</sup> and says that the agency worked to “strike a balance,”<sup>14</sup> but the preamble contains no real balancing, no discussion of any new facts found or explanation of the choices made. The evidence and risks and benefits need to be weighed. When IRS/Treasury last weighed the risks and benefits of the physical presence requirement, it outlined the arguments on both sides and then actually discussed and weighed those arguments, explaining why the requirement provided meaningful protections and why the business group’s suggestion of requiring spouses to only use a PIN instead would not be an adequate substitute.<sup>15</sup> Here, the agency simply notes the various positions, and proposes a regulation without discussion of the merits of the arguments it summarizes.

IRS/Treasury appears to admit that the only real benefit of, and hence possible rationale for, allowing remote witnessing is convenience,<sup>16</sup> and even then, never expresses an opinion about whether that meager benefit is sufficient when balanced against the risks and concerns that it has long maintained were paramount. It attempts to bulk up the weight of that “convenience” benefit by citing industry arguments that remote witnessing is a *necessary*<sup>17</sup> and *essential*<sup>18</sup> convenience for those who have trouble getting to a notary, such as (mainly older) spouses with mobility challenges or health concerns, and rural residents who may have a long commute to access a notary. However, these challenges existed prior to COVID, yet people managed to find a notary when they needed one (e.g., at their local bank or hardware store), and there are mobile notaries who will come to the customer's house. More important, these are the very types of spouses who are more likely to be isolated and therefore more vulnerable to duress, coercion, or fraud; in other words, they are among those most likely to need the additional protection that the physical presence requirement provides.

The rationale for any change in the regulation should be grounded in the letter and spirit of the REA’s requirements for spousal protections. Congress already balanced participant rights with spousal rights. The charge to IRS/Treasury is to protect spousal rights to a share of all-important retirement benefits in widowhood, not, as argued by the U.S. Chamber of Commerce, to “*balance spousal protections with the practical realities of both participants and beneficiaries and plan sponsors.*”<sup>19</sup> The only “practical reality” relevant here was COVID, and it has now sufficiently subsided as to be a nonfactor here. Any real “balancing” of the interests at stake in eliminating the physical presence requirement would need to evaluate and address the relative effectiveness of remote witnessing as compared to in-person witnessing.

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<sup>13</sup> *Physical Presence NPRM*, *supra* n. 1, at 80503-04.

<sup>14</sup> *Id.*, at 80506.

<sup>15</sup> *See 2006 Final Rule*, *supra* n. 9, at 61882.

<sup>16</sup> *Physical Presence NPRM*, *supra* n. 1, at 80506.

<sup>17</sup> *Id.*, at 80503.

<sup>18</sup> *Id.*, at 80506.

<sup>19</sup> Comments of Chantel Sheaks, VP of Retirement Policy, U.S. Chamber of Commerce, at 1 (Mar. 6, 2023) (emphasis added), available at <https://www.regulations.gov/comment/IRS-2023-0002-0002>.

### C. The Proposed Rule Fails to Evaluate Significant Flaws with Remote Witnessing

Granted, in-person witnessing of spousal consents is not foolproof. Over the years, the Pension Rights Center and the Pension Counseling and Information Projects, which help individuals with retirement income problems in 31 states, have encountered instances of participant evasion and misconduct with spousal consents even with a physical presence requirement in place. However, there are many aspects of remote witnessing that, by its design, are deeply flawed in their application to spousal consents, flaws that expand the risk of fraud and coercion, making it less capable of authenticating identity and ensuring the spouse is signing willingly.

#### 1. Authentication of Identity: Prevention of Fraud

Ensuring that the person signing a document is really who they say they are is an essential responsibility of notaries. Business groups assert that remote online notarization does a better job of authenticating a signer's identity because it relies on "credential analysis" and "identity proofing."<sup>20</sup>

Typically, credential analysis consists of the signer uploading a photo of both sides of a driver's license in advance of the session, and the RON platform ensures its validity by checking the personal information and physical features of the ID against a national third-party database. This process can catch fake IDs. Also, once the ID itself is validated, the signer is usually required to hold the ID up to the camera during the session to show it's in the signer's possession and so that the remote notary can compare the ID photo to the face of the signer.

However, there can still be problems with the credential analysis aspect of RON. The driver's license is uploaded in advance, before any video recording. If the spouse or an imposter is able to temporarily gain access to the spouse's ID, they can conceivably get past the credential analysis. Then, they only need to hold the license up during the session so that the remote notary can again see the license and compare it to the person in front of them. However, it is more difficult to compare the photo on an ID to the signer's face using a camera online than in person.<sup>21</sup> In a recently filed case<sup>22</sup> involving the use of RON in a fraudulent real estate transaction, it is unclear whether the remote online notary failed to conduct the credential analysis<sup>23</sup> or whether it was utilized but the platform's software failed. Either way, a con artist was able to impersonate a homeowner using RON to fraudulently sell the homeowner's house while the homeowner was abroad. The woman impersonating the homeowner was able to fool the notary by simply holding up a driver's license to the webcam.<sup>24</sup> Unfortunately, plan administrators witnessing remotely must rely on this less reliable

<sup>20</sup> See e.g., Letter from Renée Hunter, Gen. Counsel, Notarize, Inc., to IRS (Feb. 5, 2021), at <https://www.regulations.gov/comment/IRS-2020-0049-0005>; Letter from Doug Luftman, VP & Dep'y Gen. Counsel, DocuSign, to IRS (May 13, 2021), at <https://www.regulations.gov/comment/IRS-2020-0049-0004>.

<sup>21</sup> Bill Analysis re: AB 199, California Online Notary Act of 2019, Assembly Comm. on Judiciary, 10 (Apr. 20, 2019), at [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200AB199#](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB199#).

<sup>22</sup> *Fang v. Nexus Development Holdings, LLC, et al.*, Case No. 21-2-15437-5 SEA (Sup. Ct. King Cty., WA, Am. Compl. filed Nov. 30, 2021).

<sup>23</sup> It is important to keep in mind that state laws on RON vary; some are looser or stricter than others in their requirements for identity authentication procedures. See discussion of state law patchwork, *infra*, at IIIB1.

<sup>24</sup> M. Tank, D. Whitaker, & E. Cairns, "RON technology does not replace notarial duties – the lesson from Fang vs. Nexus Development Holdings LLC," *DLA Piper Insights* (June 29, 2022), at <https://www.dlapiper.com/en/insights/publications/2022/06/ron-technology-does-not-replace-notarial-duties>. This article notes that, ironically, it is the video recording aspect of RON that supplied the evidence needed for the buyer to

method of authenticating identity, as they do not have routine access to credential analysis; the NPRM proposes only that the spouse present an ID on camera during the live session.<sup>25</sup>

Identity proofing also usually includes Knowledge-Based Authentication (KBA), a process by which the signer is asked questions commonly generated from a private database such as from credit reporting agencies. For instance, they typically ask about prior towns or streets of residence, or whether one has ever had a certain brand of credit card. Other systems allow the signer to set up and answer their own security questions, like your first pet or even where you met your spouse or spent your honeymoon(!).

KBA has been criticized and abandoned as ineffective in an age of widespread data-mining and hacking,<sup>26</sup> but it is certainly meaningless as applied to married couples who know key facts about each other's lives and pasts, and the multiple-choice questions are ones that spouses in a marriage can easily answer. Moreover, according to one national expert, "on most platforms, there's a KBA session that happens *prior to that person meeting the notary*,"<sup>27</sup> which means it would be easy for the employee-spouse to answer the questions on behalf of the nonemployee-spouse (or an imposter) prior to the remote session with the notary occurring. Finally, the signer is typically allowed to miss a few questions, and even retake the test multiple times.<sup>28</sup> KBA is a questionable practice for use with RON but it should be disregarded outright as an identity authentication protection in the context of spousal consents.

## 2. Knowing and Willing: Prevention of Coercion and Undue Influence

The other key responsibility of notaries is to ensure the signer understands the import of the document they are signing and is doing so willingly and freely. The risk of coercion or duress of the signer is materially greater with remote witnessing than with a transaction that happens in the physical presence of the witness. The narrow view of the webcam precludes the notary or plan administrator from seeing everyone in room or even nearby, where a domineering or abusive spouse could be exerting undue influence on the signer. Nor can they necessarily see the signer's hands "signing" the document.

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make out a case of negligence by the notary. See our discussions of video recordings, *infra* at IIIA, IIIB3 & IIIB4. Although not discussed at length here, others have raised concerns about video-recordings as a substitute for in-person witnessing due to the advent of technologies that can manipulate video (such as AI). See Letter from Xavier Becerra, Cal. Att'y Gen., to Sens. Lindsey Graham & Dianne Feinstein (re: remote online notarization), at 1-2 (May 19, 2020), available at [https://cdn.ymaws.com/www.clta.org/resource/resmgr/covid19/AGBecerraLtrReRON\\_05-19-20.pdf](https://cdn.ymaws.com/www.clta.org/resource/resmgr/covid19/AGBecerraLtrReRON_05-19-20.pdf) ("This requirement [to make a video recording] also offers only limited protection against fraud because existing technology can be used to manipulate the audio and the video.").

<sup>25</sup> Proposed § 1.401(a)-21(d)(6)(ii)(B)(1), *Physical Presence NPRM*, *supra* n. 1, at 80508.

<sup>26</sup> See e.g., GAO, *Data Protection: Federal Agencies Need to Strengthen Online Identity Verification Processes* (May 2019), at <https://www.gao.gov/assets/gao-19-288.pdf>; Mike Baukes, "Everybody Knows: How Knowledge-Based Authentication Died," *Forbes* (Jan. 22, 2018), at <https://www.forbes.com/sites/forbestechcouncil/2018/01/22/everybody-knows-how-knowledge-based-authentication-died/?sh=44dc33514eee>.

<sup>27</sup> Kelly Rush, "How to prevent fraud as a Remote Online Notary," *The National Notary Bulletin* (Video at 04:23) (Sept. 2, 2020) (emphasis added) at <https://www.nationalnotary.org/notary-bulletin/blog/2020/09/how-to-prevent-fraud-as-a-remote-online-notary>.

<sup>28</sup> See Casey Birkholz, "Knowledge-based Authentication for Signers," (Notarize, last updated Mar. 14, 2023), at <https://support.notarize.com/hc/en-us/articles/10468298021271-Knowledge-based-Authentication-for-Signers>; David Thun, "How Do You Identify Signers For A Remote Online Notarization?," *The National Notary Bulletin* (Updated Apr. 20, 2021), at <https://www.nationalnotary.org/notary-bulletin/blog/2020/04/identify-signers-remote-online-notarization>.

Business groups assert that coercion is of no greater concern with remote notarizations than with those performed in the physical presence of the notary. Indeed, Notarize, a national RON platform company, labels the concern that RON can't detect duress (due to the camera's limited view) a “myth.”<sup>29</sup> Yet, they also concede that an abusive spouse or other coercer could be in the room out of view of the camera. Their response to this is to simply assert that even in-person notaries cannot know what is happening away from the “signing table,” thus RON is no worse.<sup>30</sup> But, RON *is* worse; the in-person witness can see and assess the immediate environment, whereas the remote witness cannot. The in-person witness can also pick up on certain subtleties, danger signals, and body language that cannot as easily be detected online. If the in-person witness suspects lack of capacity or duress/coercion, she or he can ask others to leave and separately question the signer, something the remote witness cannot do.

In fact, many states that generally allow RON disallow its use for certain types of documents like wills and trusts, both because of the significant financial stakes and because of the opportunities for exploitation of a vulnerable person. “Because estate planning documents can involve real concerns about fraud, undue influence, and mental capacity, many states' remote online notarization statutes and emergency orders either explicitly exclude wills and trusts from documents that can be notarized remotely, or impose more exacting requirements.”<sup>31</sup> Spousal consents also usually involve significant financial stakes. It is common sense that permanently eliminating the physical presence requirement will increase the opportunities for coercion in the execution of spousal consents.

### 3. The Efficacy of Remote Online Authorization Is Unproven and Overstated

Business groups assert that RON must be safe because they have not heard of any problems from remote online notary companies or the businesses that utilize them. However, this absence of documented problems cannot be considered evidence that remote witnessing is indeed safe. These businesses have a financial interest in RON being viewed as reliable, and are under no obligation to report problems.<sup>32</sup>

As a matter of fact, RON is a new, unproven technology. Prior to 2018, only about three states recognized RON; although all but 5 states now have some law on the books, the vast majority of those adopted their laws since 2020 when COVID hit.<sup>33</sup> Because most states enacted RON quickly as a response to a temporary health emergency, those laws “sometimes leave gaps and raise questions.”<sup>34</sup> A three-year trial is simply not enough time to determine whether there will be significant problems with allowing remotely witnessed spousal consents. Besides, with spousal

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<sup>29</sup> Andrew Macdougall “5 Myths About Remote Online Notarization” (*Notarize*, July 31, 2019) at <https://www.notarize.com/blog/5-myths-about-remote-online-notarization>.

<sup>30</sup> *Id.*

<sup>31</sup> Jennie Lin, “Remote Notarization: How to Notarize Documents Online” (Nolo, undated) at <https://www.nolo.com/legal-encyclopedia/remote-notarization-how-to-notarize-documents-online.html> [hereinafter *Nolo*].

<sup>32</sup> See *AARP 2021 Comments*, *supra* n. 8, at 2-3.

<sup>33</sup> See Nat'l Ass'n of Secretaries of State, “Remote Electronic Notarization” (last updated Feb. 21, 2023), at <https://www.nass.org/initiatives/remote-electronic-notarization>.

<sup>34</sup> *Nolo*, *supra* n. 31; see also, DocuSign, *A Guide to Remote Online Notarization* (Feb 7, 2023), at <https://www.docusign.com/blog/remote-online-notarization-guide> (“While RON is recognized in many jurisdictions across the country, it's still a relatively new process with evolving laws and standards.”)



consents to waive survivor benefits, there is a built-in delay. The problems generally don't come to light until the participant-spouse dies, which may be years, sometimes decades, after the consent was executed. PRC and the Pension Counseling Project staff attorneys confirm that the vast majority of disputed spousal consents they have seen follow this pattern. It is wholly unrealistic and spurious to expect that evidence of wrongdoing involving remote witnessing of spousal consents would have surfaced so soon.

IRS/Treasury's NPRM recites the significant concerns and arguments we<sup>35</sup> and others have raised about remote witnessing, but it makes no meaningful attempt to respond to them. This, combined with the fact that the very temporary need for remote witnessing is long over, the agency offers no new rationale for why a central ERISA protection should be eliminated, or why a mere convenience should trump such an important legal protection, makes this proposal arbitrary and capricious.

### **III. The Proposed Protections for Spousal Consents Are Inadequate and Need to Be Substantially Strengthened**

The NPRM purports to retain the physical presence requirement in (d)(6)(i), but then proposes a remote-witnessing alternative to it in (d)(6)(ii), which means physical presence is really no longer a requirement. IRS/Treasury should retain physical presence as a required feature of witnessing spousal consents, *and* strengthen the protections applicable to in-person witnessing. However, if the agency is to allow remote witnessing on a permanent basis, much greater protections and safeguards than what is currently proposed are needed to adequately protect spouses.

#### **A. Proposed Protections That We Support**

The Proposed Rule contains several protections applicable to remote witnessing – some reproduced from prior temporary guidance, and some new in this NPRM – that we support, with some tweaks.

- Remote Notarization Voluntary for Plans – If the IRS/Treasury is going to permit remote witnessing as an alternative, we support the provisions that permit plans not to accept remote witnessing. Also, we firmly support the proposed prohibition on plans *requiring* participants or beneficiaries to use it. All plans must continue to accept spousal consents witnessed in person. However, the NPRM is silent as to who gets to make the decision about which kind of witnessing procedure will be used. The rule should make clear that how to execute the spousal consent is within the sole discretion of the *spouse*; participants shouldn't be able to dictate this. Proposed § 1.401(a)-21(d)(6)(ii)(A)(1) & (B) should be revised to read “...a plan may accept a consent witnessed remotely [by a notary public or plan administrator] if the spouse chooses remote witnessing and if the signature of the person signing...”
- Clarification that Special Rules for Elections Apply – The NPRM clarifies that all of the preexisting special rules for electronic participant elections (as distinguished from notices) also apply to spousal consents. Like the agency, we, too, thought these safeguards *already*

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<sup>35</sup> Comments of Karen Friedman, Exec. Dir., & Karen Ferguson, Pres., Pension Rights Center, to IRS, RE: IRS Notice 2021-40, Physical Presence Requirement for Spousal Consents (Sept. 30, 2021), *available at* [https://www.pensionrights.org/wp-content/uploads/2022/01/prc\\_comment\\_re\\_spousal\\_consent\\_n-2021-40\\_9-30-21.pdf](https://www.pensionrights.org/wp-content/uploads/2022/01/prc_comment_re_spousal_consent_n-2021-40_9-30-21.pdf).

applied. These special rules provide important protections, i.e., that: the person have the effective ability to access the electronic medium; the electronic medium be reasonably designed to preclude anyone other than the appropriate person from making the election/consent; the person have a reasonable opportunity to review, confirm, modify, or rescind the election/consent before it becomes effective; and the right to receive a confirmation of the action. However, these special rules have never been sufficiently specific as to what constitutes compliance with these conditions, and the NPRM does not improve on this situation. For instance, IRS/Treasury should include clear guidance as to what constitutes “effective ability to access” and what measures are “reasonably designed to preclude” imposters from signing the consent.<sup>36</sup> *In addition*, IRS/Treasury should clarify that the safeguards in § 1.401(a)-21(a)(5) and (b) & (c)<sup>37</sup> – such as affirmative consent needed for electronic communications (and exemptions with rights to request paper), notices designed to be understandable, etc. – also apply to spousal consent-related notices and election forms. (See further discussion below regarding separate communications in subsection III(B) of these comments.)

- Continuation of Safeguards from Temporary Guidance – The NPRM continues to require the safeguards imposed in the agency’s prior notices temporarily suspending physical presence. We support this continuation, *as far as they go*, but as with the clarification of the special rules, there is not sufficient specific guidance on what constitutes satisfaction of these conditions. For example, for remote plan administrators, the rule should specify that both sides of the ID need to be presented, and the signer needs to hold it close enough to the camera to make sure it can be seen well. And how long does a plan administrator who has remotely witnessed a consent have to transmit the acknowledgement back to the signer? Remote notaries are required to use live audio-video technology, but no further requirements are imposed, such as recording that live interaction, or how any recording should be handled. Presumably, these elements are assumed to be addressed in state law, but IRS/Treasury should spell out key requirements as it does for plan administrators. (See also subsection IIIB below regarding the need for stronger protections.)
- Video Recording Requirement for Plan Administrators – This is a new requirement imposed on plan administrators who remotely witness spousal consents. We strongly support this requirement and the requirement that the plan must retain the recording. However, the only retention requirement references section 6001, which says nothing about the appropriate procedures or period of time for retaining retirement-related records, and thus is not the appropriate touchstone for adequate retention requirements in this situation. (See discussion below in IIIB4 regarding the need for stronger protections on possession and retention.)

## **B. Far More Is Necessary to Strengthen Spousal Protections**

The safeguards for remotely witnessed spousal consents in the NPRM should be retained, and improved as per the above discussion in IIIA. However, these protections do not go nearly far enough to adequately protect spousal rights. We urge IRS/Treasury to bolster spousal consent

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<sup>36</sup> In this vein, IRS/Treasury should also revise § 1.401(a)-21(d)(3) to delete the conflict-of-interest language in that last phrase of the last sentence (everything after “including whether...”). See discussion of conflicts of interest *infra* at p. 2.

<sup>37</sup> Subsection (c) may already apply, as it is mentioned in proposed § 1.401(a)-21(d)(6)(ii)(B)(4). It would be good to clarify this.

protections for both in-person and remote witnessing, and for both remote notaries and remote plan administrators.

### 1. Spousal Consent Rights Should Not Be Defined by a Patchwork of State Laws

The NPRM permits remote witnessing by notaries as long as live audio-video technology is used and the remote witnessing is conducted “consistent with State law requirements that apply to the notary public.”<sup>38</sup> That’s it. This is tantamount to saying that anything that satisfies state law satisfies ERISA. Recognizing that plan administrators are not subject to any state rules on remote online notification and do not have any special software for witnessing spousal consents, IRS/Treasury specified minimum standards that apply to remote witnessing by them. Yet, the agency is apparently assuming that state laws regulating RON, or perhaps the platforms they use, will automatically fill in all of the gaps.

Yet, state laws regulating notaries public vary widely, including those regulating remote online notarization. Some states don’t recognize RON at all. Most others do, but may not require the signer to show a photo ID if the notary personally knows the signer, or if a “credible witness” vouches for the signer. Most states’ regular notary laws don’t specifically require notaries to inquire about whether the signer understands the document and is freely signing it.<sup>39</sup> And, not all states appear to require RON to be video-recorded.<sup>40</sup> The divergence in state laws regulating notaries, especially remote notaries because these laws were adopted so quickly and recently, should not be the basis for defining federal spousal rights. Since it is the law of the remote notary’s state that controls, deferring to state law encourages a race to the bottom, allowing the state with the least rigorous regulation of RON to perform notarizations everywhere, regardless of how strongly protective of consumers other state laws are. How could it satisfy ERISA to give a blank check to the states?<sup>41</sup>

There is no sound legal rationale under ERISA preemption and the Retirement Equity Act to permit divergent state laws to govern such an important and longstanding federal right. The safeguards required by regulations applicable to spousal consents under that federal law should be federal too. We are not asking IRS/Treasury to get into the business of regulating notaries, we are asking it to *stay* in the business of regulating spousal consents. IRS/Treasury should set forth minimum requirements – like the physical presence requirement, like the requirements for remote witnessing by plan administrators – for spousal consents witnessed by remote notaries, minimum requirements that take precedence over varying state laws.

### 2. Plans Should Be Required to Provide Separate Communications to Spouses

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<sup>38</sup> Proposed § 1.401(a)-21(d)(6)(ii)(A)(1), *Physical Presence NPRM*, *supra* n. 1, at 80508.

<sup>39</sup> Lori Hamm, “A Notary’s Role in Preventing Elder Financial Exploitation,” *The National Notary Bulletin* (July 30, 2015), at <https://www.nationalnotary.org/notary-bulletin/blog/2015/07/notary-role-preventing-elder-exploitation>.

<sup>40</sup> David Thun, “Tips for Making Recordings of Remote Notarizations,” *The National Notary Bulletin* (updated Aug. 3, 2021), at <https://www.nationalnotary.org/notary-bulletin/blog/2020/06/tips-recordings-remote-notarizations> (“State laws *usually* require these interactions to be recorded and stored securely by the Notary...” (emphasis added)).

<sup>41</sup> Well before COVID and the temporary suspension of the physical presence requirement, IRS/Treasury deferred to state laws regulating notaries, and considered a spousal consent sufficient if the notary complied with state law, *and* it was notarized in person. The elimination of the physical presence requirement, and the raft of flaws/weaknesses that come with that (see discussion in section IIC above) such as difficulties comparing a photo or the inability to see the room, magnify the shortcomings in state law and now make deference to state notary laws inappropriate.

Often, plans combine the required explanation of spousal benefits and rights for the spouse with the participant's explanation of benefit payment options, which might also serve as the election form for participant and the waiver form for the spouse. All the communication by the plan is with the participant. Combining participant notices with spousal notices puts the participant in control of the explanatory information. Also, typically, the participant's election of a beneficiary or a desired form of payment contains the spouse's consent to waive spousal rights on the same form, even though the participant's election and signature need not be witnessed/notarized. This can enable participants to change the form after the consent is obtained and witnessed (one of the pension counseling projects had a case with such facts), and normalizes the presence of the participant-spouse during the witnessing of the spouse's consent, which can create an environment ripe for undue influence or coercion.

In service of the (d)(3) authentication requirement, and ***regardless of how the spousal consent is to be witnessed***, plans should be required to communicate directly and separately with the nonemployee-spouse. This means spouses should be allowed to select their own communications and document delivery preferences (i.e., on paper or electronically). Disclosures and forms should be on paper by default, or if the spouse separately opts in to electronic disclosure, the forms should be delivered as pdf *attachments*. Access to these documents should not depend on the spouse being alerted to their availability on a website and having to download them. Plans should be required to communicate with the spouse in a manner that *ensures actual receipt* by the spouse, and in a manner that precludes someone other than the spouse from getting documents intended for the spouse, i.e., backed up by at least two different authentication factors (KBA doesn't count), for instance a newly invented password plus entering a code sent to one's cellphone.

Spouses should receive:

- Separate Explanations – Spouses should be entitled to receive explanations or disclosures about spousal rights that are sent separately to the spouse, rather than being dependent on receiving them from the materials sent to the participant. In language understandable to the average spouse,<sup>42</sup> the disclosure should explain the nature of the default form of benefits (they are automatic unless you give them up), the impact of waiving them (if you sign the consent you will receive nothing upon the death of your spouse), that the waiver is irrevocable or any rights to rescind/revoke the consent, and should include other appropriate information in line with Treas. Reg. § 1.417(a)(3)-1. If remote witnessing is permitted, the disclosure should also explain that it is the spouse's decision whether to get the consent form witnessed in person or remotely.
- Separate Consent Forms – To avoid situations where a participant can change the election form after the spousal consent has been signed or witnessed, participants should be required to submit their election form regarding form of payment or choice of beneficiary to the plan first. If the participant's election triggers the need for spousal consent – not all of them do – the plan should be required to send a consent form directly to spouse, informing her or him

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<sup>42</sup> A few of the Pension Counseling Projects indicated that they had had several cases involving language barriers: e.g., neither the participant nor the spouse spoke English and thus mistakenly waived survivor benefits, or the spouse did not speak English but the participant did, and was able to misrepresent the waiver, telling his wife that signing the consent *preserved* the survivor benefit, when in fact it surrendered it. For such critical election and consent forms, plans should be required to provide translated forms or free access to translation services.

that the participant-spouse's election choice would deprive the spouse of survivor benefits, and that this choice will not take effect unless the spouse signs the consent before a notary or plan administrator. If the spouse consents, the spouse should also receive a separate confirmation and copy of the signed consent from the plan for the spouse's records.

### 3. Stronger Protocols for Witnessing of Spousal Consents

To strengthen authentication and reduce the chance for fraud or coercion, ***regardless of how the spousal consent is to be witnessed***, all notaries and plan administrators witnessing a spousal consent should be required to:

- Compare Photo ID – For purposes of spousal consents, it should not be sufficient for a notary just to know the signer personally, or to allow a “credible person” (whatever that means) to vouch for the signer's identity. Whether in person or remote, spouses should have to present both sides of a photo ID, and the photo on the ID should be carefully compared to the face of the signer.
- Compare a Wet Signature – Just as a notary or plan administrator must compare the signer's face to the photo on the signer's identification, they should also be required to ask the signer to sign the document (or if signing electronically, to wet-sign a blank piece of paper) *live*, and to compare that wet signature to the signature on the ID, whether in person or remote.
- Use Required Prompts – Whether in person or remote, witnesses of spousal consents should be required to ask basic questions aimed at confirming the signer's identity, capacity, understanding of the document they are signing, and whether they are signing it freely without duress or coercion. These questions could be part of a script/checklist for plan administrators and in-person notaries, and could be built into platform software as prompts for remote notaries. It would not hurt for the regulation to state that if any in-person or remote witness to a spousal consent detects signs of cognitive impairment or lack of capacity, notices any signs of possible fraud, or observes any indications, including nonverbal cues, that make the witness suspect that duress, undue influence, or coercion is involved, the witness should refuse to notarize or witness the spousal consent.
- Video-Record Live Interactions – The NPRM requires plan administrators to video-record their remote witnessing session and to retain the recording. However, there is no explicit requirement in the NPRM for remote notaries to video-record their live sessions, presumably because IRS/Treasury assumes they already do it.<sup>43</sup> This should be rectified by adding an explicit requirement to (d)(6)(ii)(A)(1) for the remote notary to video-record the session (the retention issue is discussed below). For consents executed in the *physical presence* of the notary or plan administrator, IRS/Treasury should also consider requiring the witness to take a few photos or a short video of the spouse (and anyone else present); this step would likely be a further deterrent to fraud or coercion, and could be forwarded to the plan with the consent form.

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<sup>43</sup> See discussion in text accompanying n. 40, *supra*.

- Pan the Room – As discussed in subsection IIC2 above, the inability of remote witnesses to see and read the room is a significant and inherent deficiency of remote witnessing; physical presence *does* enable the witness to see who else is with the signer or nearby and, if problems are suspected, to separate the signer from others and have a conversation. If IRS/Treasury decides to permit remote witnessing as an alternative to physical presence, then it should require an additional measure to specifically address concerns attendant to duress and coercion. Although not as effective as physical presence, remote witnesses should at least be required to have signers quickly “pan the room” (and floor) with the webcam on the signer’s device.

#### 4. Handling and Retention of Video-Recordings

The NPRM’s provisions on the handling and retention of video-recordings are wholly inadequate and must be fixed. Perhaps because the proposal doesn’t explicitly require remote notaries to make a video-recording of the live auto-video transaction, it is totally silent as to what, if anything, the remote notary is required to do with a recording, or whether there are any retention requirements.

From both a spouse’s and the plan’s perspective, it is utterly pointless to have a remote notary or RON platform retain this video. It is easy to envision a situation where the participant applies for retirement benefits and defrauds the spouse out of survivor benefits using RON. Ten years later, the participant dies. If the plan has the spousal consent form, it should indicate the name of the notary, but what if that notary is no longer around, and the RON platform can’t be identified? Notaries and high-tech companies come and go.

***The plan must retain the video – not the RON platform provider. We consider it an absolute necessity, and at the top of our priorities for strengthening safeguards in the proposed rule, for remote notaries to be required to make and send video-recordings of spousal consent transactions to the plan, and for the plan to view and then retain them for the lives of the participant and beneficiary.***

Video-recordings of remotely witnessed consents should be logically associated with and attached to the signed and remotely witnessed spousal consent form as a plan record. If the notary or platform also want to retain a copy, that is fine, assuming it is properly stored, secured, privacy-protected, and disposed of within a reasonable time. However, it is critically important that the *plan* have possession of that video-recording in case a spouse ever surfaces and challenges the validity of the consent.

Consequently, IRS/Treasury should revise (d)(6)(ii)(A)(1) to both require remote notaries to make a video-recording of the transaction and to transmit it to the plan administrator. Just as a spouse who has had a consent witnessed remotely by a plan administrator must electronically transmit a copy of the signed consent form directly to the plan administrator on the same day it was signed, remote notaries should be required to electronically transmit the video-recording to the plan on the same day it was recorded. The plan should be required to confirm receipt of the recording to the remote notary, and to view the recording with a reasonable time after receipt (e.g., two business days) to ensure it appears to comply with the terms of the plan, and then retain it as a plan record.

For video-recordings made by plan administrators under (d)(6)(ii)(B)(5), the NPRM states only that the recording must be retained by the plan in accordance with section 6001. Section 6001 says

nothing about retirement benefit-related records, and imposes no obligations on plans to retain records for a sufficient amount of time to ensure that the retirement benefits due can be determined and paid out.

Instead, the NPRM should be revised to require the plan to store all video-recordings of remote transactions, whether conducted by plan administrators or remote notaries, together with the spousal consent form and other records regarding the participant and beneficiary(ies). It should also be required to retain those records until it is no longer possible that they might be relevant to a determination of entitlement to benefits – certainly for the lives of the participant, spouse, and any other named beneficiary or alternate payee. According to the IRS:

You [plans] should keep retirement plan records until the trust or IRA *has paid all benefits* and enough time has passed that the plan won't be audited. Retirement plans are designed to be long-term programs for participants to accumulate and receive benefits at retirement. As a result, plan records may cover many years of transactions. The Internal Revenue Code, Income Tax Regulations and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, require plan sponsors to keep records of these transactions because they may become material in administering pension law.<sup>44</sup>

Moreover, plans should be required to supply all relevant records, upon request and within a reasonable time, to any possible beneficiaries or their representatives, at no charge. In the event that a plan can't or won't produce the spouse's consent form (and video-recording if remotely witnessed), it should be presumed that consent was not validly given and the plan (or plan sponsor) should be liable to pay an amount equal to the separate benefit that would have been due and payable to the surviving spouse had no consent been given.

## **5. Liability for Remotely Witnessed Defective Consents**

The increased opportunities for fraud and coercion provided by remote witnessing of spousal consents justify some special rules regarding liability for defective consents.

Already, if a plan administrator makes a mistake e.g., accepts an obviously forged consent, the plan is liable to make the spouse whole. In addition, plans should be responsible to the spouse for failures attributable to remote witnessing. For instance, it's not hard to imagine a situation where a participant temporarily "borrows" the spouse's driver's license and recruits someone to impersonate the spouse in a remote witnessing (who may or may not somewhat resemble the spouse); trying to match a signer to a photo is more difficult online than in person. In this case, the plan should also be liable to the defrauded spouse. Or, if an abusive spouse was in the room but off camera, and the spouse is later able to produce any supporting evidence of coercion (e.g., police reports of domestic violence, an adult child's attestation to the abusive relationship between the participant and spouse), a plan that accepted remote witnessing should bear the burden of showing that the consent was freely given and valid.

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<sup>44</sup> IRS, *Maintaining Your Retirement Plan Records* (last updated June 16, 2022) (emphasis added), at <https://www.irs.gov/retirement-plans/maintaining-your-retirement-plan-records>.

In addition, RON platforms typically disclaim liability to remote notaries, customers, or any third parties for notary failures.<sup>45</sup> Although this seems improper as a business model, IRS/Treasury should consider such disclaimers unacceptable in the case of remotely witnessed spousal consents. The regulation should make clear that the RON platform is strictly liable for any failures of the platform and vicariously strictly liable for failures by the remote notary, such as failure to accurately authenticate identity). The RON platform should also be liable for any failing by the notary or platform to ensure any that any personal data or video-recording collected in the course of remote notarization of a spousal consent is secured from theft or hacking. There are increasing concerns about cyberthieves being able impersonate participants or beneficiaries and steal their retirement assets.<sup>46</sup>

Alternatively, the regulation could permit remote witnessing by notaries and plan administrators, but place limits on the amount of retirement benefits that can be alienated/distributed without spousal consent made in the physical presence of the witness. For instance, if a participant wants to cash out a defined benefit pension and take a lump sum, but the spousal consent was remotely witnessed, the plan could be required to limit the distribution to an amount that would finance a lifetime 50% survivor annuity for the spouse. Or, if a married participant wanted to change the death beneficiary of his defined contribution account to a nonspouse, and the spousal consent lacked physical presence, the beneficiary change could apply only to half of the account balance, with the spouse remaining the beneficiary of the other half. (This limitation would represent a retreat from the spouse's current rights to the entire balance upon the death of the participant, but at least it provides some safety against faulty remote witnessing.)

In summary, it is important to try and ensure that spouses are made whole if they are deprived of survivor benefits due to the failures inherent in using online technology. This can be done by revising the regulation to clarify liability by plans and RON platforms, or by limiting the extent to which a spouse's benefits can be waived in a remote witnessing transaction.

## Conclusion

For nearly 40 years, spousal consents to waive survivor benefits have had to be executed in person, in the physical presence of a notary public or plan administrator, the only ERISA election that requires witnessing. Such a simple yet critical protection should not be abandoned lightly. IRS/Treasury temporarily lifted the physical presence requirement due to a serious pandemic, but that rationale for weakening spousal protections long ago fell away. The burden to justify any permanent change rests on IRS/Treasury Agency has failed. The proposed rule would undermine substantive statutory protections for the sake of a mere convenience, a move that would hurt mostly women. Instead, IRS/Treasury should retain the physical presence requirement, and focus its attention on strengthening protections applicable to consents that are witnessed in-person. If,

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<sup>45</sup> See e.g., TheBestNotary.net Customer Terms of Service (last updated June 5, 2017), at <https://thebestnotary.net/terms-of-service/>; ENotarylog.com Notary Terms & Conditions (last updated Apr. 6, 2022), at <https://enotarylog.com/wp-content/uploads/2022/04/eNotaryLog-Notary-Terms-of-Use-04.06.22-tr-V2.1.pdf> (see especially subsection 3.2, where platform doesn't warrant that it meets state law requirements, and disclaims any liability for the remote notary's failure to meet them).

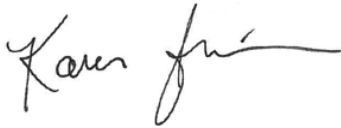
<sup>46</sup> See e.g., Noah Zuss, "Lawsuit Alleges \$751K Retirement Account Theft," *PlanSponsor* (July 11, 2022), at <https://www.plansponsor.com/lawsuit-alleges-751k-retirement-account-theft/>. Privacy concerns regarding RON platforms' profitmaking activities using the data they collect is also a concern, but may not be one that IRS/Treasury can address.



however, the agency chooses to overlook or downplay the high risks vs. the paltry benefit here, the very least it should do is to require much stronger protections attendant to remote witnessing of spousal consents than currently proposed, and apply those *federal* protections without deference to a patchwork of state laws.

Thank you for the opportunity to share our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Friedman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Karen D. Friedman  
Executive Director