



September 26, 2018  
Spousal Consent

## COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

[jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)

## ISSUE STATEMENT

Under current law, a member who is retiring under LEOFF Plan 2 must provide written consent from their spouse for any survivorship option the member selects – except in the case of a joint 50% survivorship option. This means that a spouse must provide written consent even when their survivor benefit would be greater than 50%.

## OVERVIEW

This report provides information on written spousal consent for the election of a survivor benefit, including the current policy, legislative history, policy considerations and data regarding who is impacted by the policy.

The Department of Retirement Systems (DRS) requested the LEOFF 2 Board consider endorsing legislative action to remove spousal consent requirements for certain survivorship selections (See Appendix A). DRS provided an initial presentation on their proposal to the LEOFF 2 Board at the June 20, 2018. The LEOFF 2 Board voted at the July 25, 2018 meeting to receive a Comprehensive Report on the issue.

## BACKGROUND AND POLICY ISSUES

### Survivor Benefits Overview

LEOFF 2 members may elect to take a reduction in their monthly benefit in order to leave an ongoing benefit to a survivor. The survivor will receive the ongoing benefit for their lifetime. This feature of LEOFF 2 is referred to as a survivor benefit option. The member must make this election when they apply for retirement. There are four options for a survivor benefit:

1. Single Life – This option pays the highest monthly amount of the four choices, but it is for the member's lifetime only. No one will receive an ongoing benefit after the retiree dies. If the retiree dies before the benefit they have received equals their contributions plus interest (as of the date of their retirement), the difference will be paid in a lump sum to the retiree's designated beneficiary.
2. Joint and 100% Survivor – The retiree's monthly benefit under this option is less than the Single Life Option. But after the retiree's death, the retiree's survivor will receive the same benefit the retiree was receiving for his or her lifetime.

3. Joint and 50% Survivor – This option applies a smaller reduction to the retiree’s monthly benefit than Option 2. After the retiree’s death, the retiree’s survivor will receive half the benefit the retiree was receiving for his or her lifetime.
4. Joint and 66.67% Survivor – This option applies a smaller reduction to the retiree’s benefit than Option 2 and a larger reduction than Option 3. After the retiree’s death, the retiree’s survivor will receive 66.67% of the benefit the retiree was receiving for his or her lifetime.

### Current Policy

Written spousal consent is required under current law for all survivor options except for Option 3, Joint and 50% Survivor. This includes not only Option 1, Single Life, which would leave the survivor no ongoing retirement benefit after the retiree’s death, but Option 2, Joint and 100% Survivor and Option 4, Joint and 66.67% Survivor, which would leave the survivor a larger ongoing benefit than Option 3. Written spousal consent includes having the signature notarized to ensure it meets the legal requirement of being a “written designation duly executed”.

### Department of Retirement System Proposed Policy

DRS requested the LEOFF 2 Board consider requesting legislation that would only require written consent where a member selects a benefit less than the 50% option or names someone other than their spouse as their beneficiary. Any benefit that is a 50% joint-life option or higher would no longer require written consent from the member’s spouse. DRS has requested that the Select Committee on Pension Policy (SCPP) consider requesting similar legislation for the other state retirement systems.

Survivor Option	Current Law	DRS Proposal
<b>Single Life</b>	Written Consent	Written Consent
<b>50%</b>	No	No
<b>66.67%</b>	Written Consent	No
<b>100%</b>	Written Consent	No

### Fiscal Impacts

DRS stated the one-time administrative costs associated with making this change in policy would be minimal. The Office of the State Actuary (OSA) stated there is no expected fiscal impact because of this change in policy.

### Plan Costs

The OSA completed a draft fiscal note on this proposal for the SCPP. The fiscal note stated this proposal is not expected to impact the pension systems.

## Members Impacted

29% of retirees, from all DRS covered plans, select a survivorship option greater than the 50% option, and would therefore no longer be required to get spousal consent for selecting a survivor option.

Survivor Option	Count	%
Single Life	6,487	60%
50%	1,207	11%
66.67%	711	6%
100%	2,531	23%

Under the current requirements of the spousal consent law, approximately 89% of retirees, must complete a spousal consent form. Under the proposed change in policy this would lower to 60% of retirees.

In the last year, 348 (51%) LEOFF 2 retirees completed their retirement application online. The percentage of online applications continues to rise each year; however, it has slowed to 1% growth in the last year. If the member is applying for retirement online they must complete the spousal consent form on paper and mail that form in separately from the rest of their retirement application. Removing the spousal consent requirement will allow more members to apply for retirement completely online.

## Legislative History

RCW 41.26.460 was amended in 1990 to require DRS to adopt rules to allow LEOFF 2 Members to elect an actuarially equivalent survivor benefit. The 1990 law, SHB 2643, required the survivor be nominated by “written designation duly executed and filed with [DRS]” and if the member was married that the spouse “must provide written consent [...]to the option selected [...]”. If the member does not provide written consent the law defaults the retiree to a joint and 50% survivor benefit. The requirement for spousal consent has not been modified since it was originally enacted in 1990.

The legislative materials from SHB 2643 did not contain any discussion regarding why the requirement for written spousal consent was required or why a joint and 50% survivor benefit was set as the default benefit. However, the reasoning behind the default survivor benefit being a joint and 50% survivor benefit may be due to Washington State being a community property state. In a community property state, the spouses are deemed to equally own all income and assets earned or acquired during the marriage. Typically, the division of community property results in each spouse receiving 50% of assets. Therefore, it is possible that the legislature sought to align the default survivor benefit with existing community property laws.

It is also possible that the current policy was driven by an attempt to align the State’s pension plans with federal requirements of Employee Retirement Income Security Act (ERISA). Public pension plans are not subject to ERISA; however, many public pension plans choose to adhere to many of the requirements of ERISA as best practices. ERISA requires spousal consent for Joint and Survivor Annuity elections.

As of 2013, the majority of state public pension plans required spousal consent or at least spousal notification if a retiree selects a single life annuity.<sup>1</sup> However, nineteen states do not require spousal consent or notification for a married member selecting a single-life annuity.<sup>2</sup>

## Policy Considerations

DRS believes this change would simplify the process for many members when applying for retirement, by allowing a greater number of members to retire completely online by forgoing the added steps of getting the spousal consent notarized. In addition to the customer service benefit, this policy change also makes logical sense if the policy concern driving spousal consent is to protect the financial interest of the spouse. Since current law does not require spousal consent for leaving a 50% survivor benefit, it is logical to not require spousal consent for a retiree who chooses to leave his spouse a larger benefit.

Not requiring written spousal consent may lessen spousal participation in the retirement process. This may occur because members would not necessarily need to consult spouses for most of the survivorship benefit options. As a result, some beneficiaries may feel this change removes their role in the decision-making process.

## POLICY OPTIONS

### Option 1: Endorse DRS Proposal

No longer require written spousal consent for survivor options which leave the surviving spouse a benefit greater than 50%.

### Option 2: No Change in Policy

Continue to require written spousal consent for all survivor options, except for 50%.

## SUPPORTING INFORMATION

Appendix A: May 17, 2018 DRS Letter to LEOFF 2 Board

Appendix B: June 20, 2018 DRS Presentation to LEOFF 2 Board, “Written Spousal Consent Overview”

Appendix C: OSA Draft Fiscal Note

---

<sup>1</sup> <http://www.pensionrights.org/publications/fact-sheet/state-plans-and-survivor-rights-information>

<sup>2</sup> <http://www.pensionrights.org/publications/fact-sheet/state-retirement-system-rules-%E2%80%9Cspousal-consent%E2%80%9D>



STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

P.O. Box 48380 • Olympia, WA 98504-8380 • (360) 664-7000 • Toll Free 1-800-547-6657

May 17, 2018

Dennis Lawson, Chair  
Law Enforcement Officers' and Fire Fighters'  
Plan 2 Retirement Board  
PO Box 40918  
Olympia, WA 98504

Dear Chair Lawson and Members of the LEOFF Plan 2 Retirement Board:

The Department of Retirement Systems respectfully requests that the LEOFF Plan 2 Retirement Board study and consider endorsing legislative action on the following issues this interim:

**1. Remove Spousal Consent Requirements for Certain Survivorship Selections**

Under current law, a member who is retiring must provide written consent from his or her spouse for any retirement survivorship option he or she selects – except in the case of a joint 50% survivorship option. This means that even when a member is providing a 100% or 66.67% survivorship option, the spouse must provide written consent, even though these options are greater than the default option of joint 50%. (The default option is in place because of Washington state's community property laws.) DRS would like the LEOFF Board to consider endorsing the Department's suggestion that written spousal consent be required only when the member chooses to have no survivor benefit go to the spouse.

**2. Eliminate Pro Ration of Month of Death Benefit Payment**

When a retiree or survivor passes away, the last monthly benefit payment must be pro-rated based on the number of days the person was alive in the month. For example, an individual who passes away on the 10th of the month will have accrued 1/3 of his or her monthly payment. In most cases, however, DRS isn't aware of a death until after the full monthly payment has been processed. In these instances, DRS bills the family or the estate to recover the pro-rated overpayment. This comes at a time when survivors are already navigating through paperwork and other difficult issues related to the member's death. Additionally, pro-rating the last payment can cause hardships for health insurance payments. DRS requests that the LEOFF Board consider endorsing the Department's suggestion that the pro ration of month of death benefit payments be discontinued.



Dennis Lawson

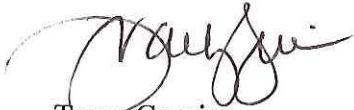
May 17, 2018

Page 2

Please let us know how we can assist the board in reviewing these issues. We are available to answer questions and provide additional background and data as needed.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tracy Guerin', with a stylized, cursive script.

Tracy Guerin

Director

cc: Steve Nelsen, Executive Director

# Written Spousal Consent Overview

LEOFF 2 Board  
June 20, 2018

Seth Miller  
Department of Retirement Systems



# Introduction

- Under current law, written spousal consent is required for the selection of all but one of the survivorship options available to retirees.
- Written consent complicates the retirement application process, especially online.
- DRS suggests that written spousal consent be required only when the member chooses to have no survivor benefit go to the spouse.



# Survivorship Options

- In most DRS plans, members select one of four survivorship options at the time of retirement.
  1. Single Life (no survivorship)
  2. 100% Survivorship
  3. 50% Survivorship
  4. 67% Survivorship
- Selection of a survivorship benefit means the retiree's lifetime monthly benefit will be actuarially reduced.

# Survivorship Options

Example: LEOFF 2 retiree, pension benefit of \$5000, spouse of the same age as the retiree

Option	Retiree Benefit	Survivor Benefit	Current Law	Proposed Law
Single Life	\$5000	\$0	Written Consent	Written Consent
100%	\$4355	\$4355	Written Consent	No
50%	\$4655	\$2328	No	No
67%	\$4550	\$3033	Written Consent	No

# Current Law

- If a member is married, the spouse must provide written consent to the selected survivorship option unless a 50% option is chosen (or a dissolution order is provided).
- This means a spouse must provide written consent even when he or she would be receiving a two-thirds or full survivor benefit.

# Proposed change

Only require spousal consent in cases where a married member is providing a benefit less than 50% to the spouse.

# Benefits of change

- The change would simplify the process for many members when applying for retirement.
  - Currently more than 50% of members complete their retirement application online.
  - More than 25% of retirees select a survivorship option greater than the 50% option.
- One-time administrative costs associated with streamlining consent requirements would be minimal.

# Questions?



## Actuary's Draft Fiscal Note For DRS Proposal: Spousal Consent

**SUMMARY OF RESULTS**

**BRIEF SUMMARY OF PROPOSAL:** Written consent for a survivorship benefit would only be required when a member selects the Single Life Option, or names someone other than their spouse or domestic partner as the survivor beneficiary.

**HIGHLIGHTS OF ACTUARIAL ANALYSIS**

Under this proposal, there is no expected fiscal impact to the retirement systems because behavior is not expected to change. In other words, we do not anticipate members will select different Survivor Benefit Options as a result of this proposal.

If behavior were to change, a fiscal impact would still not be expected because the survivorship payment forms use administrative factors that are intended to be actuarially equivalent. Regardless of the benefit payment form chosen, whether paid over a member's lifetime, or over the member's lifetime and a survivor beneficiary's lifetime, the actuarial liability at retirement is expected to be the same.

As a result, there is no expected impact to the pension systems.

*See the remainder of this draft fiscal note for additional details on the summary and highlights presented here.*

## WHAT IS THE PROPOSED CHANGE?

### Summary Of Change

This proposal impacts the following systems:

- ❖ Public Employees' Retirement System (PERS).
- ❖ Teachers' Retirement System (TRS).
- ❖ School Employees' Retirement System (SERS).
- ❖ Public Safety Employees' Retirement System (PSERS).
- ❖ Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) Plan 2.
- ❖ Washington State Patrol Retirement System (WSPRS) Plan 2.

For survivorship benefits, written consent from a spouse or domestic partner would only be required where a member selects a benefit less than the Joint and 50 Percent Survivor Option (i.e., the Single Life Option) or names someone other than their spouse or domestic partner as their survivor beneficiary. Any benefit that is a Joint and 50 Percent Option or higher would no longer require written consent from the member's spouse or domestic partner.

LEOFF and WSPRS Plans 1 have a free Joint and 100 Percent Option, so this proposal has no applicability to those plans.

Effective Date: 90 days after session.

### What Is The Current Situation?

Under current law, members of most plans administered by the Department of Retirement Systems (DRS) have the option of selecting a survivorship benefit as part of their pension benefit upon retirement. Please see the **Appendix** for a list of the statutes that contain the written consent requirement.

Currently, members have four survivorship benefit options to choose from:

- ❖ Single Life, where there is no survivorship benefit;
- ❖ Joint and 100 Percent, a full survivorship benefit;
- ❖ Joint and 66.67 Percent, a two-thirds survivorship benefit;
- and,
- ❖ Joint and 50 Percent, a half survivorship benefit.

Of the options listed above, written consent for the Joint and 50 Percent Survivor Option is not required. All other options under current law require written consent from the member's spouse or domestic partner. In addition, DRS currently requires members to notarize the written consent.



## **WHAT THE READER SHOULD KNOW**

The Office of the State Actuary ("we") prepared this draft fiscal note based on our understanding of the proposal as of the date shown in the footer. We intend this draft fiscal note to be used by the Select Committee on Pension Policy during the 2018 Interim only.

We advise readers of this draft fiscal note to seek professional guidance as to its content and interpretation, and not to rely upon this communication without such guidance. Please read the analysis shown in this draft fiscal note as a whole. Distribution of, or reliance on, only parts of this draft fiscal note could result in its misuse, and may mislead others.

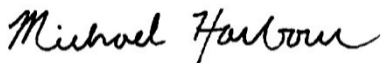
## **ACTUARY'S CERTIFICATION**

The undersigned hereby certifies that:

1. We prepared this draft fiscal note for the Select Committee on Pension Policy during the 2018 Interim.
2. We prepared this draft fiscal note and provided opinions in accordance with Washington State law and accepted Actuarial Standards of Practice as of the date shown in the footer.

The undersigned, with actuarial credentials, meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

While this draft fiscal note is meant to be complete, the undersigned is available to provide extra advice and explanations as needed.



Michael T. Harbour, ASA, MAAA  
Actuary

*O:\Fiscal Notes\2018\Draft\Spousal.Consent-DFN.docx*

**APPENDIX**

The written consent requirement is contained in the following statutes:

- ❖ PERS 1: [41.40.188 \(2\)\(a\)](#)
- ❖ PERS 2: [41.40.660 \(2\)\(a\)](#)
- ❖ PERS 3: [41.40.845 \(2\)\(a\)](#)
- ❖ TRS 1: [41.32.530 \(2\)\(a\)](#)
- ❖ TRS 2: [41.32.785 \(2\)\(a\)](#)
- ❖ TRS 3: [41.32.851 \(2\)\(a\)](#)
- ❖ SERS 2/3: [41.35.220 \(2\)\(a\)](#)
- ❖ PSERS 2: [41.37.170 \(2\)\(a\)](#)
- ❖ LEOFF 2: [41.26.460 \(2\)\(a\)](#)
- ❖ WSPRS 2: [43.43.271 \(2\)\(a\)](#)



# Spousal Consent

Comprehensive Report  
September 26, 2018

# Issue

- Under current law, a member who is retiring under LEOFF Plan 2 must provide written consent from their spouse for any survivorship option the member selects – except in the case of a joint 50% survivorship option.
- This means that a spouse must provide written consent even when their survivor benefit would be greater than 50%.

# DRS Proposal

- The Department of Retirement Systems (DRS) requested the LEOFF 2 Board consider endorsing legislative action to remove spousal consent requirements for certain survivorship selections.
- DRS provided an initial presentation on their proposal to the LEOFF 2 Board at the June 20, 2018.
- The LEOFF 2 Board voted at the July meeting to receive a Comprehensive Report on the issue.

# Overview

- This report provides information on written spousal consent for the election of a survivor benefit, including:
  - Survivor benefit options
  - Current policy
  - Legislative history
  - Policy considerations
  - Member impacts

# Survivor Benefits

- LEOFF 2 members may elect to take a reduction in their monthly benefit in order to leave an ongoing benefit to a survivor. The survivor will receive the ongoing benefit for their lifetime.
- There are 4 survivor options:
  1. Single Life - No one will receive an ongoing benefit after the retiree dies
  2. Joint and 100% Survivor - The survivor receives the same benefit the retiree was receiving
  3. Joint and 50% Survivor – The survivor receives half the benefit the retiree was receiving
  4. Joint and 66.67% Survivor - The survivor receives  $\frac{2}{3}$  of the benefit the retiree was receiving

## Current Policy

- Written spousal consent is required under current law for all survivor options except for Option 3, Joint and 50% Survivor
- If no spousal consent is obtained the benefit defaults to Option 3
- Written spousal consent includes having the signature notarized to ensure it meets the legal requirement of being a “written designation duly executed”



# Legislative History

- Current law was adopted in 1990, and has not been amended.
  - Required DRS to adopt rules to allow members to elect an actuarially equivalent survivor benefit
  - Required written consent
  - Default joint and 50% survivor benefit
- Legislative materials did not include why the requirement for written spousal consent was required or why a joint and 50% survivor benefit was set as the default benefit.
  - Possible that the legislature sought to align the default survivor benefit with existing community property laws and ERISA.

## Other States

- The majority of state public pension plans require spousal consent or at least spousal notification if a retiree selects a single life annuity.
- Nineteen states do not require spousal consent or notification for a married member selecting a single-life annuity.

# DRS Proposal

- Only require written consent where a member selects a benefit less than the 50 Percent Option or names someone other than their spouse as their beneficiary.

Survivor Option	Current Law	DRS Proposal
Single Life	Written Consent	Written Consent
50%	No	No
66.67%	Written Consent	No
100%	Written Consent	No

# Policy Considerations

- **Potential Improvements**

- **Better Customer Experience** - Allows more members to retiree completely online, without needing to find a notary and mail in spousal consent form.
- **Logical Sense** - Since current law does not require spousal consent for leaving a 50% survivor benefit, it is logical to not require spousal consent for a retiree who chooses to leave his spouse a larger benefit.

- **Potential Concerns**

- **Lessen Spousal Participation** - This may occur because members would not necessarily need to consult spouses for most of the survivorship benefit options. As a result, some beneficiaries may feel that this change removes their role in the decision-making process.

# Members Impacted

Survivor Option	Count	%
Single Life	6,487	60%
50%	1,207	11%
66.67%	711	6%
100%	2,531	23%

- Under current law, 89% of retirees, must complete a spousal consent form.
- Under proposed policy this would lower to 60% of retirees.

# Members Impacted

- In the last year, 348 (51%) LEOFF 2 retirees completed their retirement application online.
- If the member is applying for retirement online they must complete the spousal consent form on paper and mail that form in separately from the rest of their retirement application.
  - Removing the spousal consent requirement will allow more members to apply for retirement completely online.

# Plan Costs

- The Office of the State Actuary draft fiscal note stated this proposal is not expected to impact the pension systems.

# Policy Options

- **Option 1: Endorse DRS Proposal - No longer require written spousal consent for survivor options which leave the surviving spouse a benefit greater than 50%.**
- **Option 2: No Change in Policy.**





**Thank You**

**Jacob White**

**Senior Research & Policy Manager**

**(360) 586-2327**

**[jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)**