

INCREASING SPOUSAL PROTECTIONS IN RETIREMENT ACCOUNTS WOULD INCREASE WOMEN'S RETIREMENT SECURITY

Women reach retirement with fewer pension benefits and retirement assets than men. In 2008, the median annual income from pensions and annuities for women age 65 and older was approximately 60% of the median pensions and annuities income received by men (\$8,040 vs. \$13,200).ⁱ A recent study found that the median female worker near retirement with a 401(k) type plan or an individual retirement account had fewer than half the assets held by her male counterpart (\$34,000 vs. \$70,000).ⁱⁱ It is not surprising, therefore, that married elderly women are more than three times as likely as married elderly men to rely upon their spouses' pension benefits.ⁱⁱⁱ **Strengthening spousal rights in retirement accounts would help to address this shortfall in retired women's income.**

- **The protections for spousal pension rights established by Congress almost twenty-five years ago haven't kept up with changes in the pension world.**
 - ***The Retirement Equity Act of 1984 recognized marriage as an economic partnership and protected spouses' rights in traditional pensions.*** Congress passed the Retirement Equity Act (REA) to “provide for greater equity under private pension plans for workers and their spouses . . . by taking into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home.”^{iv} The REA, accordingly, made a lifetime annuity with a survivor annuity for a spouse the default form of benefit from traditional pension plans for married workers. If a married worker wishes to receive a lifetime annuity for him or herself, rather than a reduced lifetime annuity with a survivor annuity, he or she must obtain the consent of his or her spouse.
 - ***Spousal benefits in traditional pensions increase women's retirement security.*** Immediately after the REA was enacted, the number of married men who provided a survivor annuity for their spouses increased 23%, ensuring a more secure retirement for many more widows.^v In 2006, women aged 60 and over received a median survivor annuity of \$7,850 per year.^{vi} In addition, the data suggest that survivor annuities help lower-income older women avoid poverty: a disproportionate number of women receiving survivor annuities fell within the second-lowest income quintile, rather than the lowest income quintile, in 2006 – suggesting that survivor annuities made the difference.^{vii} In addition, women receiving survivor annuities were less likely to fall below the federal poverty level.^{viii}
 - ***401(k)s and IRAs are replacing traditional pensions.*** Since the REA was enacted, defined contribution plans such as 401(k) plans have largely supplanted traditional pension plans. Between 1985 and 2007, the number of defined contribution plans increased by 43% (from approximately 462,000 to 659,000 plans) while the number

of traditional pension plans decreased by approximately 71% (from approximately 170,000 to 49,000 plans).^{ix} In addition, the use of tax-favored Individual Retirement Accounts (or IRAs), has increased significantly, mostly as a result of rollovers of 401(k) account balances: IRA assets increased from \$240 million in 1985 to \$4.75 trillion in 2007.^x

- **Current law does not provide comparable spousal protections for retirement accounts.**^{xi} When workers leave a job, they can spend their 401(k) funds or roll them over into an IRA without their spouses having *any* role in making that decision. And a worker's spouse has no right of control over a worker's IRA, once the 401(k) funds are rolled over. As a result, spouses cannot ensure that savings accrued during the marriage will be available for retirement. Further, the spouse cannot prevent the worker from draining their 401(k) account or IRA in anticipation of a divorce. Under current law, a substantial pool of retirement wealth – over \$6.28 trillion in 2008^{xii} – is shielded from joint decision making and can be placed out of the reach of spouses when they need it most, during retirement.
- **Spousal protections in retirement accounts could be improved by:**
 - Making the default form of benefit from 401(k) plans a joint and survivor annuity, or its equivalent, if spousal consent is not obtained;
 - Specifically protect spouses' interests in retirement assets at divorce; and
 - Requiring spousal consent to Individual Retirement Account (IRA) distributions.

Extending spousal protections to 401(k) plans and IRAs would give millions of women the right to be involved in making choices with respect to retirement income on which they will also rely.

ⁱ Ken McDonnell, *Retirement Annuity and Employment-Based Pension Income, Among Individuals Age 50 and Over: 2008*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), May 2010, at 13 fig.1, 14 fig.2, available at http://www.ebri.org/pdf/notespdf/EBRI_Notes_05-May10.IAs.pdf.

ⁱⁱ Leslie E. Papke, Lina Walker, & Michael Dworsky, *The Retirement Security Project, Retirement Security for Women: Progress to Date and Policies for Tomorrow 4* (2008), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/RSP-PB_Women_FINAL_4.2.2008.pdf.

ⁱⁱⁱ Frank Porell & Beth Almeida, *Nat'l Inst. on Retirement Security, The Pension Factor: Assessing the Role of Defined Benefit Plans in Reducing Elder Hardships 4, 5 tbl.2* (July 2009) (finding that almost 24 percent of women received DB pensions from their spouse's former employer, compared to about 7 percent of men), available at http://www.nirsonline.org/storage/nirs/documents/pension_factor_web.pdf.

^{iv} Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426.

^v U.S. Gen. Accounting Office, *Pensions Plans: Survivor Benefit Coverage for Wives Increased After 1984 Pension Law*, GAO/HRD-92-49, at 7 (1992) (examining data from 1984-1989), available at <http://archive.gao.gov/t2pbat6/146159.pdf>.

^{vi} Email from Frank Porell, Professor of Gerontology, University of Massachusetts-Boston, to Jasmine Tucker, National Women's Law Center (Sept. 14, 2010) (on file with NWLC).

^{vii} *Id.*

^{viii} *Id.*

^{ix} Employee Benefits Security Admin., U.S. Dep't of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs 1 tbl.E1* (Mar. 2010, 2007 Data Release Version 1.2), available at <http://www.dol.gov/ebsa/pdf/1975-2007historicaltables.pdf>.

^x Craig Copeland, *IRA Assets and Contributions, 2007*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), Sept. 2008, at 2 fig.1, available at http://www.ebri.org/pdf/notespdf/EBRI_Notes_09-2008.pdf.

^{xi} There are some limited spousal rights to 401(k) and IRA assets. In the case of divorce, any contributions to a 401(k) or IRA made during the marriage are generally considered marital property and subject to division. In addition, spousal consent is required when a married worker seeks to designate someone other than his or her spouse to receive the worker's 401(k) account balance in the event that the worker dies while covered by the plan. 26 U.S.C. § 401(a)(11)(B)(iii)(I); 29 U.S.C. § 1055(b)(1)(C)(i). However, the same is not true for IRAs.

^{xii} Craig Copeland, Employee Benefit Research Inst., Issue Brief No. 333, *Individual Account Retirement Plans: An Analysis of the 2007 Survey of Consumer Finances, With Market Adjustments to June 2009*, at 4 fig.1 (2009), available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_8-2009_No333_SCF.pdf.