

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).¹ A recent study found that the median female worker near retirement with a 401(k) type plan or an individual retirement account had a balance of \$34,000, while her male counterpart had an account balance of \$70,000—more than twice as much.² As a result, women rely more heavily on a spouse's pension benefits.³ **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 protected spouses' rights in traditional pensions.*** The Retirement Equity Act (REA) 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.
 - ***Requiring spousal consent to waive survivor benefits in traditional pensions increased women's retirement security.*** Immediately after the REA was enacted, the number of married men who provided a survivor annuity for their spouses increased 15%, ensuring a more secure retirement for many more widows.⁴ In 2006, women aged 60 and over received a median survivor benefit of \$7,850 per year – a not insignificant amount.⁵ Moreover, the data suggest that DB pension survivor benefits help lower-income older women avoid poverty: a disproportionate number of women receiving DB pension survivor benefits fell within the second-lowest income quintile, rather than the lowest income quintile, in 2006 – suggesting that DB pension survivor benefits made the difference.⁶
 - ***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).⁷ 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 2007.⁸

- **Current law does not provide comparable spousal protections for retirement accounts.** Unfortunately, the protections of the REA do not apply to DC plans (unless married DC plan participants elect to receive their benefits in the form of a life annuity).⁹ 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. Thus, a substantial pool of retirement wealth—over \$7 trillion in 2010¹⁰—is shielded from joint decision making and can be placed out of the reach of spouses when they need it most.

- **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.

¹ 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.

² 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.

³ 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) (almost 24 percent of women aged 60 and over received DB pension income from their spouse's former employer, compared to about 7 percent of men, in 2006), available at http://www.nirsonline.org/storage/nirs/documents/pension_factor_web.pdf.

⁴ 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>.

⁵ Email from Frank Porell, Professor of Gerontology, John W. McCormack Graduate School of Policy Studies, University of Massachusetts Boston, to Jasmine Tucker, Policy Fellow, National Women's Law Center (Sept. 13, 2010) (on file with NWLC).

⁶ *Id.* Forty-two percent of women receiving DB pension survivor benefits were in the second income quartile, which greatly surpassed the percentage of such women in the first income quartile (15%), third income quartile (19%), fourth income quartile (17%), and fifth income quartile (7%). *Id.*

⁷ 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>.

⁸ 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.

⁹ Some spousal protections do apply in 401(k) plans. Specifically, a participant in a 401(k) plan must obtain spousal consent before designating a beneficiary other than the spouse who would receive the account balance if the participant died while participating in the plan. 26 U.S.C. § 417(a)(2). This means, effectively, that a spouse is protected against having the 401(k) assets go to someone else if the participant dies while enrolled in the plan, but *not* against having the assets go to another beneficiary if the participant changes jobs and rolls over the 401(k) balance into an IRA.

¹⁰ Craig Copeland, *Total Individual Account Retirement Plan Assets, by Demographics, 2007, With Market Adjustments to March 2010*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), May 2010, at 11 fig. 7 (March 2010), available at http://www.ebri.org/pdf/notespdf/EBRI_Notes_05-May10.IAs_PnsInc.pdf.