

# RETIREMENT

## FACT SHEET

### Increasing Spousal Protections in Retirement Accounts Would Increase Women's Retirement Security

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Women reach retirement with fewer pension benefits and retirement assets than men. In 2010, the median annual income from pensions and annuities for women age 65 and older was approximately 56% of the median pensions and annuities income received by men (\$8,400 versus \$15,000).<sup>1</sup> One 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.<sup>2</sup> As a result, women rely more heavily on a spouse's pension benefits.<sup>3</sup> **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 thirty 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.<sup>4</sup> Over the last decade, two-thirds of married households receiving income from pensions were expected to utilize survivor pension benefits.<sup>5</sup> In 2010, among women aged 60 and over who received a DB survivor benefit, the median benefit was \$7,680 per

year<sup>6</sup> – an amount that represents over half of the annual income of a typical older woman. Moreover, the data suggest that DB pension survivor benefits help lower-income older women: over half of women receiving DB pension survivor benefits fell within the two lowest income quintiles in 2010, suggesting that DB pension survivor benefits provide critical support for these populations.<sup>7</sup>

• **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 2011, the number of defined contribution plans increased by 38% (from approximately 462,000 to 638,000 plans) while the number of traditional pension plans decreased by approximately 73% (from approximately 170,000 to 45,000 plans).<sup>8</sup> 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 \$241 billion in 1985<sup>9</sup> to \$5.4 trillion in 2012.<sup>10</sup>

➤ **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).<sup>11</sup> 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 \$10 trillion in 2013<sup>12</sup>—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
- Developing robust and uniform spousal protections in Individual Retirement Accounts (IRA).

**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 Employee Benefit Research Inst., EBRI Databook on Employee Benefits, Ch. 8: Retirement Annuity and Employment-Based Retirement Income, at tbl 8.1 and 8.2 (Sept. 2011) (reporting 2010 data), available at <http://www.ebri.org/pdf/publications/books/databook/DB.Chapter%2008.pdf>.

2 Leslie E. Papke, Lina Walker, & Michael Dworsky, *Retirement Security for Women: Progress to Date and Policies for Tomorrow* 4, THE RETIREMENT SECURITY PROJECT, (2008), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement\\_security/RSP-PB\\_Women\\_FINAL\\_4.2.2008.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/RSP-PB_Women_FINAL_4.2.2008.pdf).

3 National Women's Law Center calculations based on Frank Porell & Diane Oakley, *The Pension Factor 2012: The Role of Defined Benefit Pensions in Reducing Elder Economic Hardships* at 5, NATIONAL INSTITUTE ON RETIREMENT SECURITY, (July 2012), (more than 21 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 2010), available at [http://www.nirsonline.org/storage/nirs/documents/Pension%20Factor%202012/pensionfactor2012\\_final.pdf](http://www.nirsonline.org/storage/nirs/documents/Pension%20Factor%202012/pensionfactor2012_final.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 GOVERNMENT ACCOUNTABILITY OFFICE, RETIREMENT SECURITY: TRENDS IN MARRIAGE AND WORK PATTERNS MAY INCREASE ECONOMIC VULNERABILITY FOR SOME RETIREES, GAO 14-33, at 28 (January 15, 2014).

6 Email from Frank Porell, Professor of Gerontology, John W. McCormack Graduate School of Policy Studies, University of Massachusetts Boston, to Amy Matsui, National Women's Law Center (August 4, 2012) (on file with NWLC).

7 *Id.* Over half (56.8 percent) of women receiving DB pension survivor benefits were in the two lowest income quintiles, compared to 20.9 percent in the third income quintile, 15 percent in the fourth income quintile, and 7.3 percent in the fifth income quintile. *Id.*

8 EMPLOYEE BENEFITS SECURITY ADMIN., U.S. DEP'T OF LABOR, PRIVATE PENSION PLAN BULLETIN HISTORICAL TABLES AND GRAPHS 1 TBL.E1 (June 2013, 2011 Data Release Version 1.0), available at <http://www.dol.gov/ebsa/pdf/historicaltables.pdf>.

9 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](http://www.ebri.org/pdf/notespdf/EBRI_Notes_09-2008.pdf).

10 Investment Company Institute, *Frequently Asked Questions About Individual Retirement Accounts (IRAs)*, [http://www.ici.org/faqs/faq/faqs\\_iras](http://www.ici.org/faqs/faq/faqs_iras) (last visited Oct. 10, 2013).

11 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.

12 Barbara A. Butrica, *Program on Retirement Security, Retirement Security Data Brief Fig. 1*, URBAN INSTITUTE, (April 2013), available at <http://www.urban.org/UploadedPDF/412622-Retirement-Plan-Assets.pdf>.