

“Improving Retirement Security and Access to Mental Health Benefits”

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Chair DeSaulnier, Ranking Member Allen, and members of the Subcommittee, thank you for the opportunity to submit this testimony. My name is Amy K. Matsui, and I am the Director of Income Security and Senior Counsel at the National Women’s Law Center.

The Center fights for gender justice—in the courts, in public policy, and in society—working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone—especially those who face multiple forms of discrimination. For almost half a century, the Center has been on the leading edge of every major legal and policy victory for women.

Women face a higher risk of economic insecurity throughout their lives, especially in their later years. In 2020, the poverty rate for women 65 and older was 10.1 percent (compared to 7.6 percent for older men)ⁱ—and poverty rates are consistently higher for older Black, Latinx, Asian and Native American women.ⁱⁱ Women need retirement income from employer-sponsored pensions and retirement savings plans (like 401(k)s) to supplement Social Security’s modest benefitsⁱⁱⁱ in order to experience a secure and dignified retirement. Because women face workplace inequities and shoulder the burden of family caregiving, they experience disparities in retirement income and retirement savings. As a result, married women rely on their spouses’ retirement income and savings more than men do. Right now, loopholes in spousal protections under ERISA undermine women’s retirement security—and are long-overdue to be addressed.

Women Workers Faced Challenges to Building a Secure Retirement, Even Before the Pandemic

Women, especially women of color, face deep inequities in the workforce and our economy. Women in the U.S. who work full-time, year-round are typically paid only 83 cents for every dollar paid to their male counterparts, and wage gaps are even larger for Black women, Native American women, and Latinas.^{iv} Women are overrepresented among part-time workers,^v and poorly-paid workers.^{vi} Women bear disproportionate responsibility for caregiving,^{vii} and workers of color are the least likely to have access to affordable, high-quality child care^{viii} and the paid sick days and family and medical leave that enables them to balance work and caring for themselves and their loved ones.^{ix}

Income gaps and work-related disparities translate into lower lifetime earnings for women. The gender wage gap alone can cause women to lose \$400,000 over a 40-year career, with the lifetime loss of earnings for Black women totaling nearly \$1 million, and the lifetime earnings loss for Latinas exceeding \$1.1 million.^x Work-related disruptions caused by caregiving responsibilities, whether they occur early in

women's careers when they are caring for young children or during prime-earning years when they are caring for older relatives or a spouse, also reduce women's cumulative earnings. A mother with one child earns 28 percent less than a childless woman over the course of her lifetime, and each additional child decreases her lifetime earnings by another 3 percent—although fathers do not experience any decrease.^{xi}

Because the primary sources of retirement income—Social Security, employer-sponsored pensions, and tax-favored retirement savings accounts—are based on employment and earnings, women workers face greater barriers to attaining retirement security. Being paid less than men means that women have fewer resources to save for retirement, and lower Social Security and pension benefits in their own right as workers. Taking time out of the workforce likewise reduces the earnings that women can contribute to retirement savings accounts and that are used to calculate Social Security and pension benefits.^{xii} This lifetime impact falls most severely on women of color, who have the largest wage disparities and are more likely to act as caregivers. These are also among the reasons why women lag behind in accumulating assets and wealth more generally,^{xiii} which may make it even harder to earmark savings for retirement.

COVID-19 Will Likely Further Undermine Women's Ability to Save for Retirement

The pandemic has had devastating health and economic impacts on women.^{xiv} Increased caregiving responsibilities, whether due to closed schools and the lack of child care or elder care providers or the illness of family members, fell largely on women.^{xv} Women of color are overrepresented in the front-line workforce, risking their lives to provide health care, child care, and other essential services.^{xvi} And sectors in which women workers predominate and women of color are also overrepresented^{xvii} suffered heavy job losses.

Overall, women have lost nearly 1.8 million net jobs lost since February 2020.^{xviii} While women's unemployment rate dropped to 3.6 percent in January 2022, this overall rate masks further disparities for women of color: 5.8 percent of Black women and 4.9 percent of Latinas remained unemployed.^{xix} Further, if the nearly 1.1 million women who have left the labor force since February 2020 were counted as unemployed in January 2022, women's unemployment rate would have been 5 percent in January.^{xx} And, in January 2022, nearly 1 in 4 unemployed women ages 20 and over (26.3 percent) had been out of work for 6 months or longer.^{xxi}

The pandemic will likely have long-term negative effects on women's lifetime incomes, wealth, and retirement security—especially for women of color, who faced higher rates of material hardship throughout the pandemic,^{xxii} and who tend to recover more slowly from recessions.^{xxiii} Research suggests that younger workers entering the job market in a period of high unemployment may experience reduced earnings for up to 10 years, as well as reduced job mobility,^{xxiv} both of which will impact lifetime earnings. Older women of color who become unemployed during a recession may have a more difficult time finding another job because of race, gender, and age discrimination. Many older women workers are struggling to find work: nearly 2 in 5 unemployed women ages 55 and older (38.2 percent) had been out of work for 6 months or longer in October 2021.^{xxv} Some older workers have dropped out of the workforce altogether: In October 2021, there were 369,000 fewer women ages 55 and older in the labor force than there were in February 2020. And, in fact, many of those who would still be in the workforce if the pandemic never happened have been forced to retire earlier than anticipated, especially Black older workers.^{xxvi} Job loss and extended periods of unemployment during

the pandemic will not only undermine women's economic security in the short term, but also reduce their lifetime earnings.

Women May Have Less Access to Retirement Benefits and Savings Plans

Workers are automatically enrolled in traditional defined benefit (DB) pensions and, in the private sector, are not required to contribute.^{xxxvii} DB pensions provide retirement benefits in the form of annuities, and married workers' spouses (including divorced spouses) can also receive pension benefits based on the worker-spouse's pension. DB pension benefits have been shown to help keep lower-income workers out of poverty,^{xxxviii} and annuities are especially beneficial for women because of their longer life expectancies.^{xxxix} However, the share of workers who have a traditional pension has steeply declined in recent years, with employers shifting to defined contribution retirement savings plans.

While more employers offer defined contribution (DC) retirement savings plans (like 401(k) or 403(b) plans), women, workers of color, and lower-income workers may have less access to retirement savings plans at work. Poorly paid jobs, in which women of color predominate, are especially unlikely to offer retirement benefits.^{xxx} There are also racial disparities in retirement savings plan participation: in 2016, 51 percent of white workers participated in DC plans—such as 401(k)s—compared to 33 percent of Black and 28 percent of Latinx workers.^{xxxi} And until recently, employers were not required to offer retirement savings plans to any part-time workers, and women are more likely to work part-time than men.^{xxxii}

Moreover, even if women have access to their employers' retirement savings plans and are eligible to participate, they still need to be able to spare income to contribute to their retirement savings accounts.^{xxxiii} That is because, unlike traditional DB plans, DC plans rely on the worker to put savings into their accounts, sometimes with an employer match.^{xxxiv} With smaller paychecks, women are able to spare less income to save for retirement, and exempting contributions to retirement savings plans from income tax does not make it any easier for them to do so. Given women's lower lifetime earnings, compared to men's, it is unsurprising that men's retirement savings tend to exceed women's.^{xxxv}

During the pandemic, moreover, many women have depleted existing retirement savings (after penalties on withdrawals from 401(k) accounts in 2020 were waived under the CARES Act). According to an AARP survey, more than one in five (22 percent) women reported that they prematurely dipped into their retirement savings or stopped contributing altogether since the COVID pandemic began, jeopardizing their retirement security. Additionally, one in three women said that their financial situation is worse than it was in January 2020 (before the pandemic), and of those women the vast majority said that their ability to save for retirement has worsened.^{xxxvi} The pandemic may therefore have further reduced women's retirement savings.

Married Women Rely on Their Spouses' Pensions and Retirement Savings, But Lack Legal Protections to Retirement Savings

For all of these reasons, married women tend to rely more heavily on their spouses' income and savings than married men do.^{xxxvii} Pension benefits and retirement savings accrued during a marriage are generally considered marital property under state law, under the theory that they represent deferred compensation for the productive efforts of the working spouse.^{xxxviii} While pension benefits and retirement savings can be divided at divorce,^{xxxix} Congress also recognized that it was necessary to

protect spouses' rights to marital retirement benefits even in an intact marriage. The Retirement Equity Act of 1984 (REA), implicitly acknowledged that when the worker-spouse had the right to unilaterally decide whether the other spouse would receive survivor benefits, widows lost out on retirement income.^{xi} Accordingly, the REA established spousal protections for DB plans by requiring the default form of benefit for married participants to be a joint-and-survivor annuity that provides retirement benefits during the couple's joint life along with survivor benefits to a spouse after the participant-spouse's death.^{xii} A participant's spouse must agree to receive benefits in a different form in writing, before a notary public or plan administrator.^{xiii} These protections are, understandably, more important when the spouse has fewer assets and retirement benefits of their own and outlives the participant-spouse. As a result, while spousal protections are gender-neutral, they have tended to benefit women.

However, although Congress established robust spousal protections for traditional DB pension plans, the same protections do not apply to DC plans. The REA's requirement of the joint-and-survivor spousal annuity as the default form of benefit only applies to married DC plan participants if the plan offers an annuity benefit (and few DC plans have done so),^{xiii} and the participant spouse elects payment of benefits in the form of a life annuity.^{xiv} This discrepancy in ERISA means that spouses lack the legal right to participate in the decision of whether the DC plan account balance will be received as a lump sum or as an annuity at retirement. The potential impact of this discrepancy on spouses' retirement security has increased, as DC plans have increasingly supplanted DB plans.

There is only one circumstance in which a participant in a DC plan must obtain spousal consent: if a participant in a DC plan declines to choose an annuity form of benefit, he or she 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.^{xv} But spousal consent is not required for hardship withdrawals or loans taken out against the DC account funds. And no spousal consent is required if the participant retires or changes jobs and decides to withdraw the account balance.

At that point, there is nothing to stop the participant-spouse from taking actions that could deplete their retirement savings, jeopardizing the other spouse's future retirement. As the GAO observed in a 2014 report, "In a worst case scenario, the spouse who participates in the DC plan could withdraw all the assets and spend them in ways that do not provide for the couple's retirement security."^{xvi} For example, the participant-spouse could make a risky investment, an extravagant purchase, or a gift that the other spouse did not consent to. He could lose the funds to a gambling habit or other addiction. In any of those cases, those retirement savings would be depleted and unavailable for retirement, to the spouse's detriment. The withdrawal will be subject to income taxes and, if the spent funds were withdrawn before age 59 ½, the participant-spouse could also incur tax penalties^{xvii} for which the other spouse would be jointly and severally liable, if the couple jointly filed taxes.

Practitioners have reported instances where participant-spouses, in anticipation of divorce, have sought to drain retirement savings accounts in order to prevent the other spouse from receiving their share during divorce proceedings. Some participant-spouses will go so far as to change jobs in advance of divorce. For example, in one divorce case described by a practitioner, the husband was the primary breadwinner. Although he had a 401(k) through his company, he was not a high-earner and did not have an attorney. The wife was a stay-at-home parent and qualified for representation through a legal services organization. When he realized that his wife would be awarded a portion of his 401(k), the husband quit his job and withdrew all the money. This was the only real asset that the couple had, so the wife could

not recoup the portion of the benefits she would have been entitled to from another asset. If her consent had been required, then he would not have been able to deplete the one asset the couple had.

A participant-spouse leaving a job could, alternatively, roll the account balance into an IRA – an increasingly common practice.^{xlviii} The potential implications of transferring DC account balances into an IRA for spouses are worth considering. Although spouses may have rights under state community property law,^{xlix} IRA account holders are not required, under federal law, to designate a spouse as the beneficiary of the account, even if it contains marital assets. This means that even if marital retirement savings are rolled over into an IRA from a DC plan, the worker-spouse can name a child from a previous marriage, sibling, or even a girlfriend as the recipient of those funds at his death – depriving their spouse of retirement assets they may have been counting on for retirement. Moreover, there is certainly no requirement that the worker-spouse obtain spousal consent to elect to receive account funds in a form other than a joint-and-survivor annuity, or make any other withdrawal from an IRA. As a result, if DC plan account funds are rolled over into an IRA following a job change or retirement, those funds are shielded from joint decisionmaking. What is more, spouses may be deprived of those funds when they are most in need of them, but least able to replenish them.

In sum, as the GAO wrote in 2014, “there is no protection against the assets being invested unwisely, inadvertently spent down too quickly, or simply withdrawn fully upon a job change and rolled into an IRA, with a change in beneficiary.”^l The limited spousal protections in DC plans means that there is a significant risk that retirement funds upon which the spouse will be relying for a secure retirement will be placed outside the spouse’s control – and the spouse bears the full measure of that risk, with no recourse.

Policymakers Should Strengthen Spousal Rights in Defined Contribution Plans

For all of the forgoing reasons, policymakers should strengthen spousal rights to defined contribution plans. By making the default form of benefit from DC plans a joint-and-survivor annuity, or its equivalent, if spousal consent is not obtained, Congress can close the gap in the ERISA’s protections and fully effectuate the intent of the REA. The Women’s Retirement Protection Act of 2021, for example, provides an example of robust spousal protections for the predominant form of employer-sponsored retirement benefits. While requiring spousal consent for distributions or rollovers to IRAs, this legislation would not do so for transfers to other employer-sponsored DC plans to be made. The legislation also creates an exception for instances where obtaining spousal consent would be inappropriate, which could include situations where the participant-spouse is a survivor of domestic violence, and the act of obtaining consent would subject him or her to the threat of economic coercion or physical risk.

While the spousal protections in DB plans are well-established and have been administered for nearly four decades,^{li} arguments have been made against extending these protections to DC plans. Industry groups have argued that ERISA’s existing qualified joint-and-survivor annuity requirement for DB plans should be restricted or eliminated because many spouses consent to the waiver of the annuity.^{lii} But this assertion ignores the fact that the waiver means the legal protection is operating as intended: unless there has been fraud, the spouse has participated in a joint decision about marital pension benefits. Without that legal right, the worker spouse can unilaterally decide how pension benefits are received – creating the very risk to spousal retirement security that the REA was intended to eliminate. Others have argued that there is insufficient evidence that the weaker spousal protections in DC plans actually harm spouses. However, the fact that current law does not prohibit the scenarios described above means that

it is difficult to assess how frequently they occur. Because a participant-spouse who withdraws DC account assets without consent (and the plan that allows him to do so) are not violating any laws, unless the plan has been put on notice that there is a divorce pending, under some circumstances, there is no illegal behavior to report. There is no entity or agency (such as pension counseling projects, plan administrators, or state or federal agencies) that spouses would know to contact to report this wholly legal act, and no entity or agency is known to track such reports. Moreover, many spouses would not even become aware that the retirement assets were removed from their control before they have been spent or transferred to another – in other words, until it is too late.

Finally, an argument has also been raised that spousal consent for DC plans is not necessary because more women are working than in previous generations, and thus have access to their own retirement savings.^{liii} This ignores that, as described above, many women continue to experience economic disadvantage and barriers to participation in the workforce, and thus to accruing sufficient retirement savings -- and therefore continue to rely on their spouse's retirement savings.

Conclusion

Women faced a retirement crisis well before the pandemic, and may experience decreased lifetime earnings, depleted savings, and an even more uncertain retirement in its wake. Strengthening spousal rights in defined contribution plans under ERISA would help ensure that women who rely on their spouses' retirement savings because they have fewer of their own, do not risk economic insecurity in retirement because their spouse has depleted or given away retirement savings accrued during their marriage. The Center urges policymakers to close a longstanding and increasingly significant gap in ERISA's protections and eliminate this risk to women's retirement security.

ⁱ SARAH JAVAID & JASMINE TUCKER, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES 2021 (Sept. 2021), <https://nwlc.org/resource/national-snapshot-poverty-among-women-families-2021/>.

ⁱⁱ See, e.g., AMANDA FINS, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES 2020 (Dec. 2020), <https://nwlc.org/wp-content/uploads/2020/12/PovertySnapshot2020.pdf>; AMANDA FINS, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES 2019 (Oct. 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/10/PovertySnapshot2019-2.pdf>; MEIKA BERLAN & MORGAN HARWOOD, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES 2018 (Sept. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf>; KAYLA PATRICK, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES 2016 (Sept. 2017), <https://nwlc.org/wp-content/uploads/2017/09/Poverty-Snapshot-Factsheet-2017.pdf>.

^{liii} The average monthly benefit for all women beneficiaries 65 and older was \$1,320.56, or \$15,846.72 per year as of December 2019. Nat'l Women's Law Ctr. calculations based on U.S. SOCIAL SECURITY ADMIN., ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN: 5.A OASDI CURRENT-PAY BENEFITS: SUMMARY, Table 5.A1 (2020), <https://www.ssa.gov/policy/docs/statcomps/supplement/2020/5a.pdf>.

^{liv} See NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Sept. 2021), <https://nwlc.org/resource/the-wage-gap-the-who-how-why-and-what-to-do-2/>; see also JOCELYN FRYE, CTR. FOR AM. PROGRESS, RACISM AND SEXISM COMBINE TO SHORTCHANGE WORKING BLACK WOMEN (Aug. 2019), <https://www.americanprogress.org/issues/women/news/2019/08/22/473775/racism-sexism-combine-shortchange-working-black-women/>.

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- ^v CLAIRE EWING-NELSON, NAT'L WOMEN'S LAW CTR., PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS — AND MOST ARE WOMEN (Feb. 2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/02/Part-Time-Workers-Factsheet-2.26.20.pdf>.
- ^{vi} JASMINE TUCKER & JULIE VOGTMAN, NAT'L WOMEN'S LAW CTR., WHEN HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS (April 2020), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.
- ^{vii} See, e.g., AARP & NAT'L ALLIANCE FOR CAREGIVING, CAREGIVING IN THE U.S. 2020 (June 2020), https://www.caregiving.org/wp-content/uploads/2020/06/AARP1316_RPT_CaregivingintheUS_WEB.pdf; U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, PATTERNS OF CAREGIVING AND WORK: EVIDENCE FROM TWO SURVEYS (March 2021), <https://www.bls.gov/opub/mlr/2021/article/patterns-of-caregiving-and-work-evidence-from-two-surveys.htm>.
- ^{viii} See, e.g., NAT'L WOMEN'S LAW CTR. & CTR. FOR STUDY OF SOCIAL POL'Y, A LIFETIME'S WORTH OF BENEFITS: THE EFFECTS OF AFFORDABLE, HIGH-QUALITY CHILD CARE ON FAMILY INCOME, THE GENDER EARNINGS GAP, AND WOMEN'S RETIREMENT SECURITY (April 2021), <https://nwlc.org/wp-content/uploads/2021/04/A-Lifetimes-Worth-of-Benefits-FD.pdf>.
- ^{ix} See JESSICA MASON & PAULA MOLINA ACOSTA, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, CALLED TO CARE: A RACIALLY JUST RECOVERY DEMANDS PAID FAMILY AND MEDICAL LEAVE (March 2021), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/called-to-care-a-racially-just-recovery-demands-paid-family-and-medical-leave.pdf>.
- ^x See, e.g., JASMINE TUCKER, NAT'L WOMEN'S LAW CTR., THE WAGE GAP HAS ROBBED WOMEN OF THEIR ABILITY TO WEATHER COVID-19 (March 2021), <https://nwlc.org/wp-content/uploads/2021/03/EPD-2021-v1.pdf>.
- ^{xi} MATTHEW S. RUTLEDGE, ALICE ZULKARNAIN & SARA ELLEN KING, CTR. FOR RET. RSCH. AT BOSTON COLLEGE, HOW MUCH DOES MOTHERHOOD COST WOMEN IN SOCIAL SECURITY BENEFITS? (Oct. 2017).
- ^{xii} TRACEY GRONNIGER & AMBER CHRIST, ASSET FUNDERS NETWORK, FROM SURVIVING TO THRIVING: ENSURING THE GOLDEN YEARS REMAIN GOLDEN FOR OLDER WOMEN (2020), https://assetfunders.org/wp-content/uploads/AFN_2020_EconomicSecurityOlderWomen_BRIEF_SINGLE-2.18.20.pdf.
- ^{xiii} See, e.g., HEATHER MCCULLOCH, CLOSING THE WOMEN'S WEALTH GAP: WHAT IT IS, WHY IT MATTERS, AND WHAT CAN BE DONE ABOUT IT (Jan. 2017), <https://womenswealthgap.org/wp-content/uploads/2017/06/Closing-the-Womens-Wealth-Gap-Report-Jan2017.pdf>.
- ^{xiv} See, e.g., AARP, HOW WOMEN'S FINANCIAL EXPERIENCES DURING THE PANDEMIC SHAPE FUTURE OUTLOOK (updated May 2021), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/financial-expectations-pandemic-women.doi.10.26419-2Fres.00450.003.pdf; CENTERS FOR DISEASE CONTROL, RACIAL AND ETHNIC DISPARITIES IN COVID-19 INCIDENCE BY AGE, SEX, AND PERIOD AMONG PERSONS AGED <25 YEARS—16 U.S. JURISDICTIONS, JANUARY 1–DECEMBER 31, 2020 (Mar. 19, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7011e1.htm?s_cid=mm7011e1_w; NAT'L WOMEN'S LAW CTR., A YEAR OF STRENGTH AND LOSS (March 2021), https://nwlc.org/wp-content/uploads/2021/03/Final_NWLC_Press_CovidStats.pdf; DIANA BOESCH & SHILPA PHADKE, CTR. FOR AM. PROGRESS, WHEN WOMEN LOSE ALL THE JOBS ESSENTIAL ACTIONS FOR A GENDER-EQUITABLE RECOVERY (Feb. 2021), <https://www.americanprogress.org/issues/women/reports/2021/02/01/495209/women-lose-jobs-essential-actions-gender-equitable-recovery/>; Diane Coyle, *Working Women of Color Were Making Progress. Then the Coronavirus Hit*, N.Y. TIMES (Jan 14, 2021), <https://www.nytimes.com/2021/01/14/opinion/minority-women-unemployment-covid.html>; DOMINIQUE DERBIGNY, CLOSING THE WOMEN'S WEALTH GAP, ON THE MARGINS: ECONOMIC SECURITY FOR WOMEN OF COLOR THROUGH THE CORONAVIRUS CRISIS AND BEYOND (April 2020), https://womenswealthgap.org/wp-content/uploads/2020/04/OnTheMargins_April2020_CWWG.pdf; see also HARVARD LAW SCHOOL, PETRIE-FLOM CTR., BILL OF HEALTH, COVID-19 IS A PERFECT STORM OF HARDSHIP FOR US IMMIGRANT COMMUNITIES (May 4, 2020), <https://blog.petrieflom.law.harvard.edu/2020/05/04/immigrant-communities-us-covid19-coronavirus/>.
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^{xvi} NAT'L WOMEN'S LAW CTR., WOMEN MAKE UP THE MAJORITY OF FRONT LINE WORKERS OF THE COVID-19 CRISIS (March 2020), https://nwlc.org/wp-content/uploads/2020/05/final_NWLC_Frontlines_FactSheet-002.pdf.

^{xvii} See, e.g., CLAIRE EWING-NELSON, NAT'L WOMEN'S LAW CTR., ONE IN FIVE CHILD CARE JOBS HAVE BEEN LOST SINCE FEBRUARY, AND WOMEN ARE PAYING THE PRICE (August 2020), <https://nwlc.org/resources/one-in-five-child-care-jobs-have-been-lost-since-february-and-women-are-paying-the-price/>; CLAIRE EWING-NELSON, NAT'L WOMEN'S LAW CTR., MORE THAN THREE IN FOUR OF THE HEALTH CARE WORKERS FIGHTING COVID-19 ARE WOMEN (August 2020), <https://nwlc.org/resources/more-than-three-in-four-of-the-health-care-workers-fighting-covid-19-are-women/>.

^{xviii} JASMINE TUCKER, NAT'L WOMEN'S LAW CTR., MEN HAVE NOW RECOUPED THEIR PANDEMIC-RELATED LABOR FORCE LOSSES WHILE WOMEN LAG BEHIND (Feb. 2022), <https://nwlc.org/resource/men-recouped-losses-women-lag-behind/>.

^{xix} *Id.*

^{xx} *Id.*

^{xxi} *Id.*

^{xxii} See, e.g., NAT'L WOMEN'S LAW CTR., NWLC ANALYSIS OF U.S. CENSUS BUREAU COVID-19 HOUSEHOLD PULSE SURVEYS, <https://nwlc.org/resources/nwlc-analysis-of-u-s-census-bureau-covid-19-household-pulse-surveys/>.

^{xxiii} See, e.g., JARED BERNSTEIN & JANELLE JONES, CTR. ON BUDGET & POL'Y PRIORITIES, GROUNDWORK COLLABORATIVE, THE IMPACT OF THE COVID-19 RECESSION ON THE JOBS AND INCOMES OF PERSONS OF COLOR (May 13, 2020), https://groundworkcollaborative.org/wp-content/uploads/2020/05/Groundwork-Bernstein-Jones-paper_5.13.pdf (stating that the incomes of low-paid workers are expected to decline precipitously, with the incomes of Black workers falling more, and even faster); see also CHANDRA CHILDERS & GLADYS MCLEAN, INST. FOR WOMEN'S POL'Y RSCH., BLACK AND HISPANIC WOMEN LAG IN RECOVERING FROM THE RECESSION (August 2017), <https://iwpr.org/publications/black-hispanic-women-lag-recovering-recession/>.

^{xxiv} See, e.g., Catherine Bosley, Max Reyes, Jeff Green & Bloomberg, *How Millennials Are Being Set Back by Back-to-Back Financial Crises*, FORTUNE (April 11, 2020), <https://fortune.com/2020/04/11/millennials-coronavirus-great-recession-economy-personal-finance/>; *Facing Adulthood With an Economic Disaster's Lasting Scars*, N.Y. TIMES (May 19, 2020), <https://www.nytimes.com/2020/05/19/business/economy/coronavirus-young-old.html>; Janet Adamy, *Millennials Slammed by Second Financial Crisis Fall Even Further Behind*, WALL ST. J. (Aug. 9, 2020), <https://www.wsj.com/articles/millennials-covid-financial-crisis-fall-behind-jobless-11596811470>.

^{xxv} National Women's Law Center calculations using U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS (BLS), LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY: A-38, PERSONS NOT IN THE LABOR FORCE BY DESIRE AND AVAILABILITY FOR WORK, AGE, AND SEX (November 8, 2021), <https://www.bls.gov/web/empsit/cpseea38.htm>.

^{xxvi} See, e.g., OWEN DAVIS, BRIDGET FISHER, TERESA GHILARDUCCI, & SIAVASH RADPOUR, THE NEW SCHOOL FOR SOC. RSCH., THE PANDEMIC RETIREMENT SURGE INCREASED RETIREMENT INEQUALITY (June 2021), <https://www.economicpolicyresearch.org/jobs-report/the-pandemic-retirement-surge-increased-retirement-inequality> (noting that between March 2020 and June 2021, at least 1.7 million more older workers than expected retired due to the pandemic recession and that Black workers without a college degree experienced the highest increase in the percent share of those retired before 65, from 16.5 percent to 17.9 percent); see also MATTHEW S. RUTLEDGE, NORMA B. COE & KENDREW WONG, CTR. FOR RET. RSCH. AT BOSTON COLLEGE, WHO CLAIMED SOCIAL SECURITY EARLY DUE TO THE GREAT RECESSION (July 2012), <https://crr.bc.edu/briefs/who-claimed-social-security-early-due-to-the-great-recession/>.

^{xxvii} MONIQUE MORRISSEY, ECONOMIC POL'Y INST., THE STATE OF AMERICAN RETIREMENT: HOW 401(K)S HAVE FAILED MOST AMERICAN WORKERS (March 2016), <https://www.epi.org/publication/retirement-in-america/>.

^{xxviii} BETH ALMEIDA & FRANK PORELL, NAT'L INST. ON RET. SEC., THE PENSION FACTOR: ASSESSING THE ROLE OF DEFINED BENEFIT PLANS IN REDUCING ELDER HARDSHIPS (July 2009), <https://www.nirsonline.org/reports/the-pension-factor-assessing-the-role-of-defined-benefit-plans-in-reducing-elder-hARDSHIPS/>.

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- ^{xxix} See, e.g., Ctr. For Disease Control, National Vital Statistics Rapid Release, Provisional Life Expectancy Estimates for June through January 2020 (Feb. 2021), <https://www.cdc.gov/nchs/data/vsrr/VSRR10-508.pdf>.
- ^{xxx} TUCKER & VOGTMAN, *supra* note 6.
- ^{xxxi} MORRISSEY, *supra* note 27.
- ^{xxxii} CHRISTIAN E. WELLER ET AL., NAT'L INST. ON RET. SEC., STILL SHORTCHANGED: AN UPDATE ON WOMEN'S RETIREMENT PREPAREDNESS 3 (May 2020), <https://www.nirsonline.org/wp-content/uploads/2020/04/Still-Shortchanged-Final.pdf>.
- ^{xxxiii} MORRISSEY, *supra* note 27.
- ^{xxxiv} *Id.*
- ^{xxxv} GRACE ENDA & WILLIAM G. GALE, HOW DOES GENDER EQUALITY AFFECT WOMEN IN RETIREMENT? (July 2020), <https://www.brookings.edu/essay/how-does-gender-equality-affect-women-in-retirement/>.
- ^{xxxvi} AARP, *supra* note 14.
- ^{xxxvii} MCCULLOCH, *supra* note 13, at 2; see also Joan Entmacher & Amy Matsui, *Addressing the Challenges Women Face In Retirement: Improving Social Security, Pensions, and SSI*, 46 J. MARSHALL L. REV. 749, 766 & 789 (2013), <https://repository.law.uic.edu/lawreview/vol46/iss3/4/>.
- ^{xxxviii} See, e.g., LESLIE JOAN HARRIS, JUNE CARBONE & LEE E. TEITELBAUM, FAMILY LAW 422-38 (4th ed. 2010); see also Statement on Signing the Retirement Equity Act of 1984 (Aug. 1984), <https://www.reaganlibrary.gov/archives/speech/statement-signing-retirement-equity-act-1984> ("The Retirement Equity Act also clarifies that each person in a marriage has a right to benefit from the other's pension.").
- ^{xxxix} See Harris, Carbone & Teitelbaum, *supra*; Form and Payment of Benefits, 29 U.S.C. § 1056(d) (2021).
- ^{xl} Statement on Signing the Retirement Equity Act of 1984, *supra* note 38 ("[The REA] improves and protects the vital role of pensions as retirement income to widows.").
- ^{xli} See Retirement Equity Act of 1984, Pub. L. No. 98-397, § 203(a), 98 Stat. 1426 (1984) (providing that DB plans must establish qualified joint and survivor annuities and preretirement survivor annuities as the default form of benefit for married participants).
- ^{xlii} See *id.* § 203(b) (providing that spouse must consent in writing before a notary public if a married participant elects a form of benefit other than the default joint-and-survivor annuity).
- ^{xliii} See MICHAEL J. BRIEN & CONSTANTIJN W. A. PANIS, ANNUITIES IN THE CONTEXT OF DEFINED CONTRIBUTION PLANS: A STUDY FOR THE U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION 12 (Nov. 2011), <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/analysis/retirement/annuities-in-the-context-of-defined-contribution-plans.pdf>.
- ^{xliv} See 26 U.S.C. §417(a)(11)(B)(iii) (2021).
- ^{xlv} See 26 U.S.C. §417(a)(11)(B)(iii) (2021).
- ^{xlvi} U. S. GOVERNMENT ACCOUNTABILITY OFFICE, RETIREMENT SECURITY: TRENDS IN MARRIAGE AND WORK PATTERNS MAY INCREASE ECONOMIC VULNERABILITY FOR SOME RETIREES 48 (January 2014), <https://www.gao.gov/assets/gao-14-33.pdf>.
- ^{xlvii} Internal Revenue Service, Retirement Plans, Hardships, Early Withdrawals, and Loans (Apr. 2021), <https://www.irs.gov/retirement-plans/hardships-early-withdrawals-and-loans>.
- ^{xlviii} EBRI, Fast Facts: The Changing Landscape of Individual Account Retirement Plan Assets and the Differences by Race/Ethnicity (Apr. 2021), https://www.ebri.org/docs/default-source/fast-facts/ff-394-retassets2-1apr21.pdf?sfvrsn=85e73a2f_6.
- ^{xlix} For federal income tax purposes, IRAs are deemed to be separate property. 26 U.S.C. § 408(g). But federal tax law does not abrogate community property rights under applicable state law. See, e.g., I.R.S. P.L.R. 199937055 (Sept. 17, 1999) (finding that community property-based rights to IRAs should be determined under applicable state law). Specifically, in states that have adopted community property regimes (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin and, to a limited extent, Alaska and Puerto Rico), spouses have rights to IRA assets, even if the IRA is titled in the other spouse's name alone, if the assets were earned or acquired during the marriage (except as an inheritance or gift to one spouse). *Id.*; Wells Fargo Advisors, Individual Retirement Account Add/Change of Beneficiary Form, <https://www.wellsfargoadvisors.com/bw/wellstrade/forms/578639.pdf> (listing community property states where spousal consent may be necessary when the beneficiary is not a spouse).

ⁱ U. S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 46.

ⁱⁱ In addition, the Federal Thrift Savings Plan requires spousal consent for FERS participants. See Thrift Savings Plan, Spouse's Rights, <https://www.tsp.gov/planning-for-life-events/spouses-rights/>.

ⁱⁱⁱ See, e.g., Lifetime Income RFI Comment Letter, DEFINED CONTRIBUTION INSTITUTIONAL INV. ASS'N 14 (May 3, 2010), <http://www.dol.gov/ebsa/pdf/1210-AB33-656.pdf>.

ⁱⁱⁱⁱ U. S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 46, at 49.