NATIONAL ACADEMY OF•SOCIAL INSURANCE

UNCHARTED WATERS: PAYING BENEFITS FROM INDIVIDUAL ACCOUNTS IN FEDERAL RETIREMENT POLICY

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Fact Sheet #3: Family Issues: Spouses and Children

Spousal Rights: What rights will spouses have to claim the money in individual accounts? Social Security, private pensions, IRAs, and family law all offer very different precedents.

Social Security provides spousal benefits. About 14 million individuals – 30 percent of all beneficiaries – receive Social Security benefits based at least in part on a spouse's work record. Almost all of them are women, because women typically earn less than men.

Here is an example: John has a retirement benefit of $1,500 a month. His wife Jane is entitled to $600 a month based on her earnings, plus a supplement that would give her a total retirement check equal to half of John's benefit. (As a spouse, she is entitled to half of John's benefit.) Jane would receive $600 from her own work record plus a $150 supplement, bringing her to $750 a month. (If she did not work in Social Security covered employment at all, she is still entitled to $750 a month as a spouse.) The total family Social Security retirement benefits in this case are $2,250 a month: John's benefit of $1500 and Jane's benefit of $750.

If John dies, Jane gets 100 percent of his benefit or $1,500 a month. Her total income as a widow is $1,500 a month.

In the event of divorce, if the marriage has lasted 10 years, a former spouse can qualify for spousal retirement benefits if she or he is at least 62 and unmarried. When John retires, his ex-wife Jane can get $750 a month if this is higher than the benefit she would receive based on her own work record.

Spousal Rights in Private Retirement Savings Plans: Federal rules vary considerably for private pensions, IRAs and 401(k) plans. A defined benefit pension has a fixed monthly payment linked to years of work and salary. Federal rules say that the pension must provide a 50 percent benefit for a surviving spouse when a worker dies. In return for this protection for the spouse, the retiree accepts a smaller monthly pension check. This rule is enforced unless the spouse signs a statement waiving the right to the survivor pension.

Individual Retirement Accounts (IRAs), in contrast, provide no spousal rights, although the accounts can be divided as part of a divorce settlement.

If a 401(k) account holder dies, the spouse receives the money in the account unless he or she previously consented to have it go to someone else by signing a waiver. If the 401(k) account holder quits the job, or is laid off, he or she can roll the money into an IRA. Then, IRA rules apply and spouses lose automatic survivor protection. In the event of divorce, access to a 401(k) can be negotiated as part of the settlement.

Policymakers dealing with personal accounts must decide on the rules for spousal rights. One possibility is to require protections similar to those of Social Security. Another possibility is to use federal rules. A third option is to rely on state rules as a model.

Common law states consider the title-holder to be the owner of the property. The nine community property states (which include 29 percent of the U.S. population) view property acquired during the marriage as belonging equally to husbands and wives.

Some policy questions:

At a worker's death, would the account automatically go to a widowed spouse, or could the account holder name any death beneficiary he or she chose?

At divorce, would accounts be automatically divided under federal rules? Or would state courts have authority to reallocate account funds as part of an overall divorce settlement? If funds were transferred at divorce, would funds acquired be accessible before the age of retirement?

Children's Rights: About 3 million children under age 18 received Social Security benefits in December 2002. These children represented about 7 percent of all Social Security beneficiaries, and 4 percent of all children in the United States. About half of these children are survivors of deceased workers, 38 percent are dependents of disabled workers, and about 12 percent are children of retired workers. Another 2 million children live in families in which another member receives benefits from Social Security. Also, about 749,000 disabled adult children—those who have been classified as severely disabled since childhood (before age 22)—are eligible for benefits on the same terms as minor children when a parent dies, becomes disabled, or retires.

If a worker is disabled—with a physical or mental ailment making it impossible to work for a year—Social Security will pay benefits. Money also is available for the disabled worker's spouse, and any children under the age of 18, or under 19 if they have not yet graduated from high school. Benefits also are available for minor children as survivors when a worker dies and for the spouse caring for those children.

For a worker with average earnings, a spouse, and two children (in 2002), Social Security provided the equivalent of a $403,000 life insurance policy and a $353,000 disability insurance policy.

Most individual account plans specify inheritance rights only for a current spouse or widowed spouse. If there were no spouse, most plans would let the account holder pick anyone he or she chose as the death beneficiary. In this case, the account holder could name someone other than dependent children, or name only some children and leave out others. Policymakers will need to decide whether to have uniform federal policies concerning children's rights or to leave the issues to state jurisdiction.

In addition, members of Congress will need to address the following questions:

Would a widowed spouse with children have access to the inherited funds for immediate needs?

If children and a widowed spouse live in separate households, how would the money from the account be divided?

How would child support requirements affect distribution of personal accounts after parent's death?

Source: Reno, Virginia P., Michael J. Graetz, Kenneth S. Apfel, Joni Lavery, and Catherine Hill (eds.), (2005). *Uncharted Waters: Paying Benefits from Individual Accounts in Federal Retirement Policy,* Study Panel Final Report, Washington, DC: National Academy of Social Insurance, January.

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