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Spousal Rights

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- ❖ 14 million individuals receive Social Security benefits based in part on a spouse's work record (13.8 million are women)
- ❖ As more women are employed, more will receive Social Security as workers. Many will be dually-entitled to higher benefits as widows.

About 14 million individuals – 30 percent of all beneficiaries – receive Social Security benefits based at least in part on a spouse's work record. These beneficiaries are overwhelmingly women. About 6 million women are entitled to Social Security as workers and to higher benefits as widows, wives, or divorced wives. Another 7.8 million women receive Social Security solely as widows, wives or divorced wives.

Individual accounts pose new questions about what rights spouses and widowed spouses would have to the accounts. Answers to these questions are particularly important if accounts are designed to replace a part of Social Security benefits.

Questions include: how would spousal rights be addressed during marriage? What would happen to accounts at divorce? Would married persons automatically inherit the account when their spouses die? There are many precedents for answering these questions.



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Precedents for Determining Spousal Rights

- ❖ Social Security benefit rules
- ❖ Federal rules for private pensions, 401(k)s, and IRAs.
- ❖ State family property rights
 - ❖ Common law states
 - ❖ Community property states

Social Security provides spousal benefits to wives, widows, husbands, and widowers, disabled widowed spouses, as well as to ex-wives and ex-husbands, protecting them against the income losses of a worker's death, retirement, or disability. Spousal benefits are paid only to the extent that the benefit exceeds what the spouse would receive based on his or her own work record. These benefits are paid for life, keep pace with inflation, and are provided without reduction in the benefit paid to the worker. The cost of paying spousal benefits is spread among all participants in Social Security.

Federal rules set spousal rights for private pensions, IRAs, and 401(k) plans. Private defined-benefit plans require that a widowed spouse receive at least a 50 percent survivor pension from the plan, unless the spouse waived that right. The survivor pension lowers the pension for the retiree, as Jeff explained earlier. IRAs, in contrast, provide no special spousal rights, although the accounts can be divided as part of a divorce settlement.

401(k) plans are between pensions and IRAs. If a 401(k) account holder dies, the spouse would receive the account unless he or she previously consented to have it go to someone else. If the 401(k) account holder rolled over the account into an IRA, the IRA rules apply and spouses lose the automatic survivor protection.

A third precedent is family property law, which is determined by states and varies from state to state. Common law states consider the title-holder to be the owner of the property, although all common law states now call for equitable distribution of property at divorce or death. 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. As family structures have grown more complex (children from multiple marriages, for instance), states have adopted varying solutions to resolve issues presented by contemporary family life. Most states—both common law and community property—allow state rules on property rights to be overridden by a contract that is mutually and fairly agreed to by the husband and wife before or during a marriage or at divorce.



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Pros and Cons of Federal Treatment of Spousal Rights

- ❖ Pros
 - ❖ Ensure uniform treatment
 - ❖ Reduce need for litigation
 - ❖ Simplifies plan administration
- ❖ Cons
 - ❖ Less flexible treatment for individuals

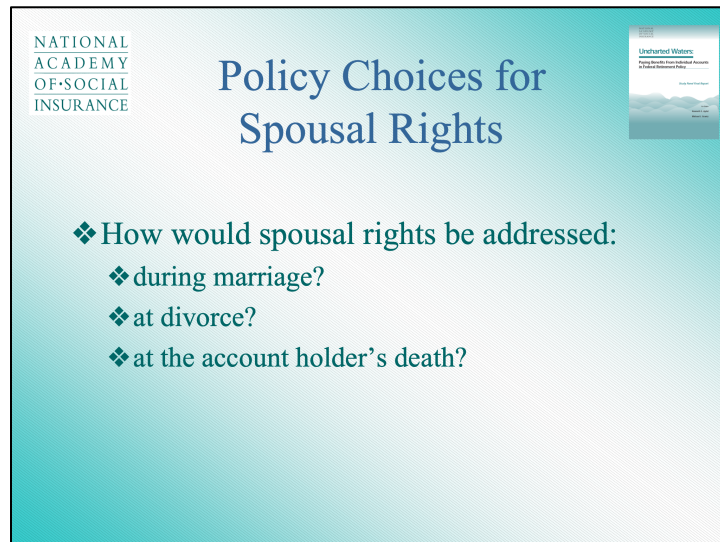
If policymakers wish to implement uniform spousal rights under an individual account system, they will need to define the rules explicitly in federal law. Absent that, state courts and legislatures will make decisions about spousal rights. These decisions will lead to different treatment of spousal rights for account holders residing in different states. It may also lead to changes in the property treatment of accounts when account holders move between common law and community property states.

The advantage of having national rules is clear: they ensure uniform treatment for all account holders, no matter where they work or reside. Moreover, uniform rules can reduce costs by reducing the need for lawyers to represent the rights of account holders and spouses and by simplifying plan administration. But creating federal policy on spousal rights in an individual account system would require making tradeoffs. Because

individual accounts are a finite pool of assets, when one person receives a share, another person's share is reduced.

Letting states decide spousal rights would not provide the uniformity. But, at least arguably, state decisions might ensure more equitable treatment for individuals. State courts, for example, routinely decide how to divide the marital property of divorcing spouses who have been unable to reach settlement. Other retirement accounts (such as IRAs and 401(k)s), are already subject to division by state courts at divorce. The advantage of this approach lies in its flexibility: one divorcing spouse might want to exchange his or her right to a retirement account for the family home, while another divorcing spouse who expects to live a long life might prefer the interest in a retirement account. State courts might arbitrate these disputes and supervise settlements that better address the marital breakup circumstances.

At the same time, relying on states courts could pose problems for low- and moderate-income individuals who are unable to afford lawyers. It is important to recognize that at least one party in family law proceedings typically does not have a lawyer.



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Policy Choices for Spousal Rights

- ❖ How would spousal rights be addressed:
 - ❖ during marriage?
 - ❖ at divorce?
 - ❖ at the account holder's death?

If establishing spousal rights, policymakers may consider how accounts are treated at different distribution points: during marriage, at divorce, at death, or at retirement. Karen covered many issues about retirement.

During marriage, one option would be to divide account contributions equally between husbands and wives, building community property principles into the account system. Another approach would credit each spouse with her or his own personal contributions. A related issue is whether a married account holder would need spousal consent to take money out of the account or borrow it, if such access were allowed at all. If a spouse has a future claim on the account funds at widowhood or divorce, then spousal consent to use the funds for other purposes might be warranted.

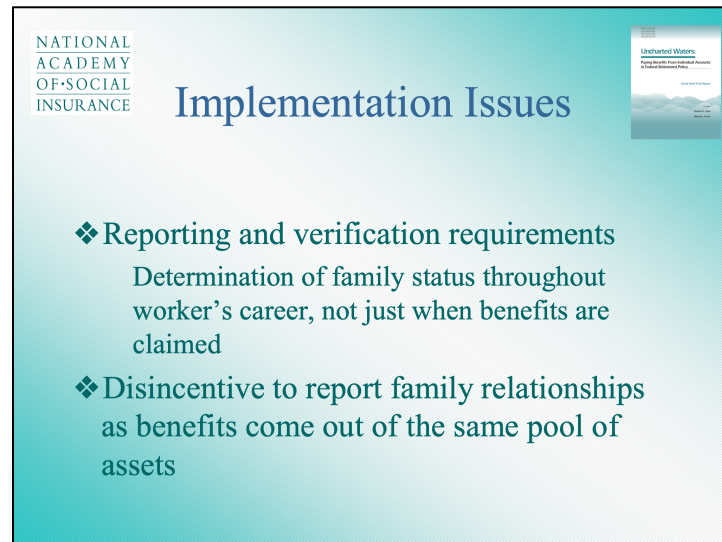
At divorce, would accounts be automatically divided under federal rules? Or would state courts have authority to reallocate account funds as part of an overall divorce settlement?

If funds are transferred at divorce, would funds acquired be accessible? As Peter discussed, many Social Security reform proposals ban access to fund before retirement.

Would that ban apply to funds acquired at divorce?

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

These questions are explored in depth and options are examined in the Spousal Rights chapter of our report.



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Implementation Issues

- ❖ Reporting and verification requirements
 - Determination of family status throughout worker's career, not just when benefits are claimed
- ❖ Disincentive to report family relationships as benefits come out of the same pool of assets

Administering spousal rights in an individual account system could impose new reporting and verification requirements, beyond those faced by the Social Security system.

Social Security benefit entitlement is generally based on family relationships in existence when individuals establish entitlement to benefits – when workers retire, die, or become disabled. The system does not need to track marriage and divorce over the working life.

If individual accounts required ongoing updates on the account holder's family status before becoming entitled to benefits, Congress would need to authorize new administrative arrangements for reporting and resolving disputes or discrepancies in marital status. Additionally, the ongoing updates would need to account for less formal family relationships such as common law marriage (recognized by some states, but not by all), informal separation or abandonment, or parent-child relationships.

The current Social Security benefit structure provides a strong incentive for individuals to report and document family relationships. Spouses and divorced spouses receive benefits in addition to those paid to workers, with no consequent reduction in workers' own benefits. By contrast, if individual accounts were divided between husbands and wives, either by contribution splitting year-by-year or by dividing accounts at divorce, account holders might fail to report a marriage because they do not want a spouse to receive funds at their own expense. Policymakers would need procedures to track marriage and divorce and to hear and resolve disputes.

Any individual account proposal must look beyond the individual account holder and address the issues of spousal rights to the account during marriage, at divorce, at retirement, and at death. A clear articulation of congressional intent as to the rights of current and ex-spouses would be necessary to clarify the process of payouts from individual accounts.