

Pandemic relief measures place women's retirement security at risk

Posted by Emily Spreiser on April 29, 2020



Takeaways:

- *Industry groups are seeking changes that would make it easier for employees and retirees to access their retirement savings during the pandemic crisis. This would bypass longstanding procedures designed to protect their spouses*
- *Changes to private retirement laws that allow people to pull money out of their retirement plans without a spouse's permission, combined with stalled divorce processes, create opportunities for benefit-earners to prevent their partner from receiving retirement benefits.*
- *Women are more likely than men to be dependent on a spouse's retirement benefits for income later in life. Women – especially widowed and divorced women – are also more likely to face poverty in old age. Changes that remove spousal protections disproportionately harm women.*

As the economic crisis created by the COVID-19 pandemic continues to wipe out jobs and force pay cuts, many Americans are turning to the money that they were saving for retirement. At the Pension Rights Center we tell people that pulling money out of retirement funds should always be a last resort. But we also understand that right now many Americans feel that it is their only choice.

“Choice” is the key word. The decision to take money out of a retirement plan to cover today's expenses should be a conscious, informed decision on the part of the retiree. And if that retiree is married to someone who is also going to be relying on that income in old age, the spouse should be an equal partner in the decision-making process.

A number of changes to the retirement system have been proposed or enacted to make it easier for people to access their retirement savings during the economic crisis. For instance, [the CARES Act](#) makes it easier for people in 401(k) plans who meet certain tests to take large sums of money out of their accounts through loans and hardship withdrawals. These types of benefit distributions (unlike those for federal employees in the Thrift Savings Plan) do not require a spouse to give permission.

Likewise, decades-old pre-pandemic laws provide that pension plans must automatically pay married retirees their benefits in monthly installments, and then pay lifetime survivor benefit payments to the spouse if the retiree dies first. If the benefit-earner wants an immediate lump sum distribution or another form of payment instead, the spouse must agree to give up his or her rights to survivor benefits and sign a consent form before a plan administrator or a notary. This requirement allows couples to make this important

decision together. It also helps prevent employees from forging their spouses' signatures on the form or coercing their spouses into signing against their will.

But at a time when most people are sheltering in place, it is extremely difficult for them to go to a notary, so **retirement industry groups have asked government agencies to eliminate the in-person notarization requirement** and substitute new forms of electronic notarization, such as virtual video chats.

At PRC we are concerned that the industry's proposal does not provide enough protection to spouses, so we recently joined with the National Women's Law Center to write **our own letter to the Treasury Department and the Internal Revenue Service**. Our letter suggests that pension plans should be able to allow benefit-earners to withdraw a *portion* of their benefits during the emergency period using electronic notarization (with safeguards), but require in-person notarization after the COVID-19 emergency is over if the couple decides they want to cash out additional funds.

Why are we so concerned about this? Can't we just assume that benefit-earners are acting in the best interests of their spouses when they make these decisions? Unfortunately, no. We see cases all the time in which workers and retirees have made financial decisions harmful to their spouses, sometimes by accident and sometimes on purpose. There are abusive relationships – reports of domestic violence have gone up during the pandemic. And there are affairs. Even well-intentioned, loving partners, facing stress from the current economic downturn and under pressure to move quickly, may fail to communicate well with each other or simply not consider all of the impacts their decisions may have on a spouse's future economic well-being until it's too late.

Perhaps the biggest risk is for spouses who are in the process of getting a divorce, but whose divorces have been delayed because the pandemic has shut down the court system (or who don't yet know their partners are planning to divorce them) – divorce rates in China have risen under pandemic conditions and some speculate this will also happen in the US. **Delays in the divorce process mean that court orders legally awarding a fair share of a retirement benefit to the other spouse are also delayed**. This, combined with changes that enable people to take their retirement benefits without a spouse's permission, create a perfect opportunity for divorcing parties to hide retirement plan money from their spouses.

The reality is that changes in the rules that remove protections for spouses disproportionately harm women, as women are more likely to be dependent on a spouse's retirement savings, face a pay gap that turns into a retirement income gap, and are statistically more likely than men to outlive their retirement savings. And it is worse for women of color. Women living alone are already the poorest group among the elderly, and most likely among the hardest hit by the COVID-19 emergency. Recent law changes and proposals shouldn't be allowed to make their situation worse.

Our laws have long recognized that widows and divorced spouses who made important contributions to their marriages, such as running a household and/or caring for children or other relatives, have a right to a fair share of retirement benefits earned during a marriage. **Women are way more likely to be the ones to have made those contributions**. Any scenario that makes it easier for benefit-earners to limit the retirement

income their wives or soon-to-be-former spouses receive should be alarming to anyone who is concerned about women's financial security in retirement.

And yet that scenario is exactly what is happening.

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