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ABSTRACT

This speech focuses on women and private pension plans, such as private pension coverage and smaller benefit amounts. Pension issues affecting women as employees include participation in plans, vesting, break-in service, benefit accruals, integration with Social Security, sex-based actuarial tables, portability, inflation, and individual retirement plans (IRA's). Areas of concern to women as spouses include divorce, widowhood, and IRA's for homemakers. The pension changes which would substantially affect the likelihood of women receiving pensions based on their employment are enumerated, as are the changes which would be helpful to homemakers. (NRB)

Women and Private Pensions

U.S. Department of Labor
Ray Marshall, Secretary

Labor-Management Services Administration
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Pension and Welfare Benefit Programs

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INTRODUCTION

Income to support retired workers and their survivors in the U.S. comes mainly from three sources: (1) Social Security and Railroad Retirement benefits, (2) private or public pension funds, and (3) income from assets. Because Social Security does not provide sufficient income and because very few can rely on income from their assets to provide a significant part of their support, pensions are usually necessary to maintain an adequate standard of living in old age.

I will be discussing only private pension plans, i.e., plans covering those who work in the private sector and not governmental plans (which cover Federal, military, and state and local governmental employees).

Private pension plans are sponsored by employers in the private sector, sometimes jointly with labor unions. They are usually financed solely by the employer, but occasionally they are partly financed with some contributions from the employee. Since these plans are virtually vital to avoid poverty in old age, they should be of great concern to women because women constitute a high proportion of those over 65. Women constitute a high proportion of those over 65 because they have longer life expectancies than men. Although incomes of the elderly have improved considerably, many older women now live in poverty.

PENSION SITUATION OF WOMEN

It is a fact that fewer women than men have been receiving pensions after retiring from the workforce. A survey of 1969-70 Social Security beneficiaries indicated 46 percent of men and 21 percent of women with private pension coverage on their longest jobs.[1] A survey of 1972 Social Security beneficiaries indicated 49 percent of men and 21 percent of women with private pension coverage on their longest jobs.[2] Those who actually received private pension benefits that year were about 35 percent of men and 13 percent of women.

When women have received pensions, the amount of the pension money generally has been smaller than the amount received by men. A Social Security study reported that in 1969-70 the median annual private pension for women was $970 and $2,080 for men.[1] The earnings replacement rates were less disparate though—women's pensions replaced 19 percent of wages and men's 25 percent. In 1972 the median private pension benefit received was $1,200 for women and $2,230 for men.[2]

It should be remembered that these studies deal with those who are already retired and retired before enactment of the Employee Retirement Income Security Act of 1974 (ERISA). Plan provisions were much more restrictive during the worklife of these retirees than they are now.

There are many reasons for women's less likely private pension coverage and smaller benefit amount, some of them interrelated.

The main reason that fewer women than men have been receiving pensions is that fewer women than men have even been covered by private pension plans. A 1972 study by the Department of Labor, HEW (now Health and Human Services), and the Treasury of those working full-time in 1972, in the private sector showed 52 percent of men and 36 percent of women covered by a private pension plan.[3]

The lack of pension coverage among women is often due to the type of jobs women hold. Why are women less likely to be employed in a job with a pension plan?

First, women are concentrated in the poorer industries, less likely to provide pensions. The retail and service industries, employing 25 percent of women and half the women employed in the private sector, have the lowest pension coverage.

Second, employees in union usually have pension coverage, but men are more likely to be union members than women.

Third, pension coverage is more prevalent in large firms and high-wage firms and in certain occupations. Women are more likely employed in small, low-wage firms, and in occupations which tend to have low pension coverage.

Offsetting this, however, a larger percentage (24 percent) of women than men (16 percent) are in government, which has a high probability of retirement programs. Government employees are excluded from the data on pension coverage, so women's coverage under pension plans has generally been underestimated, since government employees, encompassing more than one-fifth of the female labor force, have high pension coverage.

Moreover, even when women were in jobs covered by private pension plans, they themselves often were not actually covered by the plan because of not meeting the plan's age and service requirements. If they did become eligible to participate in the plan, women still often have not actually become entitled to receive benefits because they fail to become vested. Being "vested" in a pension plan means you have a legal right at retirement to the pension benefit earned, even if you leave the job before retirement. Employees cannot receive the pensions they earn unless they are vested. The reason women have failed to become eligible to participate in pension plans or to receive benefits has been, again, women's employment patterns. Pension plans have been designed in the past—and still are, really—to reward an uninterrupted work career, low job mobility, and solid earnings.

Before World War II women typically were in the work force only in their late teens and early twenties before marriage. After World War II there was a new pattern. Women's employment still peaked in the early twenties and dropped from ages 25 to 34 at the height of childbearing responsibilities, but after World War II women's participation by age 45 was more like their early twenties. In 1970, 51.5 percent of women were in the work force at ages 20-24, the percentage dropped at ages 25-44 (particularly between ages 25-34), and by age 45, 50.4 percent were in the labor force.

Finally, even when women manage to be covered by a plan and to become vested, they generally have a shorter work life than men due to dropping out to rear children. Their shorter service, along with lower earnings, is reflected in the smaller dollar amount in pension benefits.

Interrupted work experience results in lower earning potential and less ability to become vested in retirement benefits. New patterns seem to be emerging, however, so it may be that the pension picture will be brighter in the future for a larger number of women. Pressures which developed after World War II for women to confine themselves to home have lessened considerably. Today, more women are career-oriented and a larger percentage of women will have continuous work experience. Many women are postponing motherhood so, even if they interrupt their careers, they still have a longer attachment to the work force during the important wage growth years

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[1] Kolodrubetz, Walter W., "Private Retirement Benefits & Relationship to Earnings: Survey of Beneficiaries," *Social Security Bulletin*, May 1973, page 16, at 17.

[2] Thompson, Gayle B., "Pension Coverage and Benefits, 1972: Findings from the Retirement History," *Social Security Bulletin*, February 1978, page 3, at 4 & 10.

[3] Kolodrubetz, Walter W. and Landay, Donald M., "Coverage and Vesting of Full-time Employees under Private Retirement Plans," *Social Security Bulletin*, November 1973, page 20 at 21.

of ages 25 to 40. Many do not cease working to rear their families. A 1979 BLS study bears this out and indicated that there has been a spectacular increase in labor force participation in women ages 25 to 34. Their labor force participation advanced 17 percentage points between 1970 and 1978 (and 12 percent from 1973-78), reaching 62 percent in 1978. This is remarkable because over 70 percent of these women are married, living with husbands, and have children under 18 at home. Moreover, three out of four employed women in May 1979 were employed full time.

Higher pension coverage and income for a significant number of women in the future is not necessarily assured, however. Women who are included in pension plans may have a greater chance to receive pension benefits as a result of the rules imposed by ERISA, and as a result of changing patterns of employment. However, women's relatively low earnings and their preponderance in firms and occupations with low pension coverage may limit both their pension coverage and the amount of their benefits. In 1977, the median earnings for women who worked year round, full time and in the experienced labor force were $8,800—59 percent of the median for men; similar figures for 1939 show median earnings of women were 58 percent of the median for men. (These figures give truth to the old adage, "the more things change, the more they stay the same."*) The extent to which employed women will move out of the traditional occupations or the degree to which women will gain earnings parity with men is not known—nor do we know if the recent labor force increases for women will abate.

ERISA was enacted in 1974 to protect the interests of employee/participants in pension plans and their beneficiaries and to correct abuses. ERISA does not distinguish between male and female employees. The law speaks only in terms of employees and makes no distinctions based on sex. As I have noted, ERISA may have considerable impact on payments made to women from private pensions in future years, especially if trends in women's behavior over the last several years continue. Many, however, believe that the ERISA provisions are still insufficient to provide retirement income security for a significant number of women.

*What seems to be ignored in the differential between men's and women's earnings are pension benefits which, as deferred compensation, should be considered part of compensation. Women's lower receipt of pension benefits and the smaller amount received increases the earnings differential between men and women.

PENSION ISSUES OF CONCERN TO WOMEN

Pension benefits from private pension plans are available to women in two ways—(1) as retired employees entitled to pensions based on their employment, and (2) as spouses of employees—and sometimes in both ways.

I will first discuss pension issues affecting women as employees. And, then, women as spouses.

Before I begin I should note that there are basically two kinds of pension plans: defined benefit pension plans and defined contribution pension plans (also called individual account plans).

A defined benefit pension plan specifies the benefits or the method of determining the benefits, but not the contributions. (The contributions under the plan are determined actuarially on the basis of the benefits expected to become payable.)

In a defined contribution pension plan, the contributions are fixed, but not the benefits, e.g., a fixed percentage of compensation is contributed. The amount of the retirement benefit is whatever the amount accumulated in the participant's account will buy at retirement.

Issues Affecting Women as Employees

Participation in Plans

Employers are not required to maintain pension plans. Whether or not to have a pension plan is at the employer's discretion. When they do maintain pension plans, they are not required to cover all employees.

Most pension plans require employees to meet age and service requirements before they are permitted to participate in the plan. Before ERISA some plans had as much as a 5-year service and age 30 eligibility requirement and many plans placed maximum ages on admittance to plan participation—some excluded those 55 or older when hired. Many plans have other eligibility requirements also—such as only hourly workers are covered.

ERISA allows plans to have age and service requirements, but places restrictions on what those requirements may be. Plans are not restricted in any way from having eligibility requirements other than age and service except that tax-qualified plans (which include virtually all pension plans) may not discriminate in favor of the highly paid, officers, and shareholders.

ERISA provides that a pension plan's age and service requirements for participation cannot be more strict than age 25 and 1 year of service (or age 25 and 3 years, if the plan provides full and immediate vesting). Plans of tax-exempt educational institutions which provide 100 percent vesting after 1 year may require age 30 for participation. Keogh plans (plans of the self-employed and their employees) may require 3 years of service but may not have an age requirement.

Women's past employment patterns indicate that the 20-24 year-old women have the highest labor force participation rate (68.3 percent in 1978) and that by age 25 a large number drop out of the labor force for child-rearing. Those who do are not even included in most pension plans. Thus, a women who works from age 18 to age 25 and then drops out could have had 7 years in the labor force and yet not have been eligible to be covered by the pension plan.

Employees can be excluded from pension plan participation if they do not work 1,000 hours a year. Women are more likely than men to work fewer than 1,000 hours, but it is not clear whether liberalization of the 1,000-hour rule would truly benefit women. It could be that women would wind up with fewer opportunities for part-time work if employers were required to include those with fewer than 1,000 hours in pension plans. Whether ERISA's 1,000-hour rule has had much adverse effect on part-time employment opportunities is still not clear. Women who work part-time also need pensions. However, if the effect of liberalizing the 1,000-hour rule were to result in the evaporation of part-time employment opportunities, it might be better for part-timers with fewer than 1,000 hours if employers could exclude them from their plans and, instead, the employees set up an individual retirement plan (an IRA)—which I will discuss later.

At the other end of the age scale, participation in defined benefit pension plans cannot be denied employees on the basis of a maximum age unless an employee begins employment within 5 years of the plan's normal retirement age—and if that is 65, at age 60 or older. The reason for this rule is that it is a greater expense for a defined benefit pension plan to provide pension benefits to late entry workers than to younger workers because of less time available to fund benefits. This is not true of defined contribution plans.

Vesting

When you participate in a pension plan, you earn or accrue pension benefits. However, you are not entitled to receive those benefits when you retire unless they are vested. As I mentioned before, being "vested" in a pension benefit means that you have a legal right at retirement to receive the benefit earned. Participating in a pension plan and accruing benefits means little if you can lose those benefits.

Before ERISA many plans provided no vesting unless employees remained on the job until retirement and had several years of service with the company. The result was that employees with as much as 30 years of service under a pension plan were sometimes not eligible to receive benefits if they changed employers before retirement. ERISA's vesting provisions are a considerable improvement.

Although most employees in the private sector are not required to contribute to their pension plans, a few are—and ERISA requires that employee contributions are fully and immediately vested.

ERISA sets forth two rules with respect to vesting benefits attributable to employer contributions:

1 — An individual employed under the pension plan at the time of the plan's normal retirement must be fully vested. So, if the plan's normal retirement age is 65, a 65-year-old with 4 years of service is fully vested in the benefits accrued during those 4 years.

2 — To cover the situation of employees' leaving before the plan's normal retirement, ERISA provides that plans must adopt a vesting schedule that meets one of ERISA's three options. The most commonly adopted vesting schedule is the 100 percent vesting after 10 years of service, with no vesting before 10 years. Probably over 75 percent of plans adopted this option. The other two alternatives are:

1 — 25 percent after 5 years of service, plus 5 percent for each additional year of service, up to 10 years (50 percent vesting after 10 years), plus an additional 10 percent for each year thereafter (100 percent vesting after 15 years of service).

2 — Rule of 45: 50 percent vesting for an employee with at least 5 years of service when his or her age and years of

service add up to 45, plus 10 percent for each year thereafter.

Under any of the options an employee must be at least 50 percent vested after 10 years of service and 100 percent vested after 15 years, regardless of age.

There are other vesting standards for specific plans and specific situations.

A BLS study indicates that in 1978, 28.6 percent of men have been on their current job over 10 years; 15.6 percent of women have 10 or more years on their current job.[4]

BLS figures indicate that in 1978 the median number of years on the current job for women was 2.6 (the median number of years on the job for men was 4.5). The median number of years on the job for women age 45-54 was 5.9 (for men it was 11.0), for women age 55-64, it was 8.5, and women 65 and older, 8.4. Both men and women in this country change jobs fairly often so that many employees at retirement have worked fewer than 15 years, or even 10 years, for one employer. So, while ERISA's vesting standards are helpful to some and certainly an improvement over the past, a significant number of employees, both men and women, still will not qualify to receive private pension benefits.

Moreover, all of an employee's years of service with an employer do not have to be counted for purposes of vesting. Years of service before age 22 can be disregarded.

An employee who began work at age 18 and worked for the same employer until age 31 would have 13 years of service with the employer. If the employee pension plan required age 25 for plan participation, the employee would have 6 years of plan participation at age 31. If the plan provided for vesting after 10 years and counted from age 22, the employee would have 9 years towards vesting. If the employee quit at age 31, she would have no vested benefit, even though she had 13 years of service with that employer. If she continued to work one more year, to age 32, she would be 100 percent vested in benefits accrued during 7 years of plan participation after 14 years of service with the same employer.

Finally, it should be noted that vested benefits attributable to employer contributions can be forfeited if an employee dies before retiring.

One commentator, critical of ERISA's vesting provisions, likened the vesting provisions to the eyes of needles, with employees the camels, and suggested that, in order to understand how well women fare in pension plans, simply visualize a pregnant camel.

ERISA's vesting rules have been criticized for allowing the pension system to rely financially on the forfeiture of benefits from short-term employees, more likely to be women, to subsidize benefits for longer service employees, more likely to be men. Inadequate job tenure is the main reason fewer women than men become vested and qualify for pension benefits.

[4] U.S. Department of Labor, Bureau of Labor Statistics, News Release USDL 79-285, April 23, 1979.

Break in Service

Another ERISA improvement concerns what happens when an employee incurs a break in service. A break in service can occur through events beyond an employee's control, such as plant shut-downs and layoffs. Before ERISA, in many plans a break in service, no matter how short, could wipe out all pension credits earned. When a break occurred an employee had to begin anew earning credits after each break even when returning to the same employer. The result was often no pension because of so many breaks or a very small pension due to losing previously earned credits. Thus, a break in service had serious consequences on an employee's pension.

It still can. An employee can still lose all pension credits earned because of an interruption in employment. But the circumstances under which this can happen are somewhat more limited due to ERISA. ERISA has laid down complex rules governing what can constitute a break in service as well as circumstances under which plans are required to recognize pre-break service if an employee returns to employment covered by the plan and circumstances under which a break may wipe out pension credits. There are exceptions and precise definitions in this area, which I will not go into. I will just give the general rules.

ERISA does not permit plans to recognize as a break in service breaks which are shorter than 1 year. And a 1-year break is a 12-month period during which an employee has less than 501 hours of service. This requirement is helpful to women who have short leaves of absence, e.g., for maternity leave, and return to the same employer.

If an employee incurs a break (no matter how long) after becoming vested, those vested benefits are, of course, not wiped out by a break. If an employee is not vested, whether a 1-year break will wipe out previously earned credits depends on when and if the employee returns to the job and on the type of pension plan.

An employee in a defined benefit pension plan who has no vesting and incurs a break will not lose previously earned nonvested benefits until the number of years of the break equals the number of years of pre-break service *which are counted for vesting.* For example, an employee in a plan with provisions meeting ERISA's minimum standards who began work at age 20 and quit at age 27 will have 2 years of plan participation, 5 years counted for vesting for her 7 years of service and must return to service under the plan before 5 years are up in order to keep from losing the pension benefits she earned.

If the benefits in the defined benefit plan are partially vested, the pre-break service is counted upon return, no matter how long the break. If the plan provided 25 percent vesting after 5 years, her 2 years of earned benefits will not be lost no matter how long her break so long as she returns. (If she doesn't return, she receives 25 percent of the benefits she earned in the 2 years of plan participation.)

The rules are more complicated and less generous for participants in defined contribution plans and plans funded solely by individual insurance contracts. ERISA permits these plans to provide that nonvested benefits are forfeited upon a 1-year break in service. If a participant in one of these plans returns to employment before the number of years of break equals the number of pre-break years of service counted for vesting, those pre-break years are counted ONLY for vesting benefits earned after the return to work.

In the defined contribution plan, then, the employee who began work at age 20 and quit at age 27 would lose the 2 years of benefits she accrued (from age 25 when she began participating in the pension plan), but, if she returns to employment under the plan within 5 years (the number of years she has for vesting, counting from age 22), those 5 years will count towards the vesting of the benefits she earns after her return. This employee loses her 2 years of accrued pension benefits while the employee in the defined benefit plan does not, even though both return within 5 years.

So, ERISA's break-in-service provisions are some help – to those who have short breaks and return to the same employer. They are not much help to women who, even if they managed to work long enough to become covered, drop out of the work force for a significant period for child rearing. A November 1975 *Monthly Labor Review* article stated, "Past estimates indicate the birth of a child reduces the average number of years a married woman could have expected to remain in the work force by 10 years, with each additional child further reducing the mother's work-life expectancy from 2 to 3 years." Although this pattern may have changed in recent years, many women still prefer to interrupt job careers for child rearing. Under present rules that choice can result in forfeiting pension benefits earned. In the arguments over the different treatment of men and women under actuarial tables, resulting in smaller pensions to women, seldom is it mentioned how much in earned pension benefits women are forced to forfeit because of carrying out the traditional role of child rearing. Women are subsidizing pension plans in ways that are just not considered. Women are now beginning to realize and are finding it difficult to accept that they must incur so many disadvantages in order to meet child-rearing responsibilities. On the other hand, the Military Selective Service Act prohibits an employer or a plan from allowing a veteran to suffer disadvantage because of service in the Armed Forces. Despite the sentimentalizing of motherhood and children, women are coming to realize that the price of child rearing in the U.S. is a possible old age of poverty.

Benefit Accruals

To encourage long service many defined benefit pension plans provide for employees to accrue smaller benefits in their earlier years of service under the plan and larger benefits in the later years. For example, an employee could be credited with 1.5 percent of annual pay for the first 5 years of plan participation, 1.75 percent for the next 5, and 2 percent for the remaining years. This is called "back loading." Back loading results in greater ultimate pension benefits for long-term employees and smaller benefits for shorter-term employees.

Although ERISA allows some degree of back loading, it sets limits on the amount of back loading so that plans are not permitted to unduly restrict the rate for accruing benefits in early years and reserve the sizable accumulations for later years.

Because women generally have had shorter service than men, any degree of back loading has affected women more than it has men.

Integration With Social Security

Because Social Security benefits are "weighted" in favor of the lower paid, private pension plans are permitted to counterweight benefits in favor of the higher paid.* The theory is to take into consideration the combined Social Security and private plan benefits to produce a total retirement income that is a relatively equal percentage of compensation for all employees.

The practical effect of pension plan integration is to wipe out totally or reduce pension benefits for employees whose earnings do not exceed the Social Security taxable wage base (currently $25,900). Thus, employees covered by a private pension plan could legally wind up with nothing from it.

Since women's earnings are on the average lower than men's, women are more likely than men to be "integrated out" of the pension plan or to receive substantially reduced benefits. If contributions are made only for earnings in excess of the Social Security taxable wage base, almost all women would be excluded.

Proposals have been made to change the integration rules so that employees in integrated plans would be assured of at least some benefits from the plans.

Sex-Based Actuarial Tables

An issue subject to increasing debate is the use of sex-based actuarial tables for calculating pension benefits.

*For example, in an "offset" plan, the private pension can be reduced by up to 83 1/3 percent of the employee's primary insurance amount under Social Security (i.e., the amount the employee is entitled to receive at age 65). Under an "excess" plan a benefit of up to 37 1/2 percent of compensation may be provided with respect to compensation above the Social Security taxable wage base without providing a benefit with respect to compensation below it. Under an integrated defined contribution plan, an employer can contribute to the pension plan up to 7 percent of an employee's compensation above the Social Security wage base without making any contributions based on compensation below it.

This issue arrises under title VII of the Civil Rights Act and the Equal Pay Act. It is not dealt with by ERISA.

When sex-based actuarial tables are used in computing benefits or contributions, either more money must be contributed towards women's pensions or else women receive smaller monthly benefits than men because women as a group are expected to live longer than men as a group. This subject can be complicated and itself could constitute a very long speech, so I will just give you highlights of the situation.

The issue generally arises in private pension plans only with respect to defined contribution plans. Under a defined contribution plan the employer and sometimes the employee contribute a specified amount or a specified percentage of pay into the pension plans. The total amount of contributions plus interest and earnings are used to provide a retirement annuity. If sex-based actuarial tables are used to compute the annuity, a woman with the same amount of total pension money in her account as a man of the same age will receive a smaller monthly annuity. This is because that amount of money has to be theoretically spread over a longer period of time for the woman than for the man because of the general longer life expectancy of women.

There have been several court decisions holding that the use of sex-based tables constitutes sex discrimination in violation of title VII of the Civil Rights Act and the Equal Pay Act. The *Manhart* decision[5] of the Supreme Court ruled out requiring unequal contributions from *employees* based on sex. Lower court decisions[6] ruled out unequal annuities.

A problem is that, while employers and pension plans are subject to title VII and the Equal Pay Act, the business of insurance is not. A bill, H.R. 100, has been proposed to prohibit insurance companies from using sex-based tables.

Apart from title VII and the Equal Pay Act, there are many arguments on the fairness of sex-based tables—both pro and con. Women point out that sex is only one factor predictive of life expectancy. Others are race, family history, occupation, geographic location, education, marital status, smoking, hobbies, etc. Yet separate actuarial tables for these factors are not utilized in computing pension benefits. Moreover, the tables used to compute pension benefits of employed women include nonemployed women as well.

Finally, women are not usually given the benefit of their longer life expectancy in employee benefit plans providing life insurance, which would result in either higher amounts of insurance or lower rates for their lives.

[5] *City of Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1977)

[6] *Equal Employment Opportunity Commission v. Colby College Teachers Insurance and Annuity Association*, 589 F. 2 1139 (1978) and *Spirit v. TIAA-CREF and Long Island University.*

Portability

Portability is the ability to transfer the present monetary value of vested pension benefits to a succeeding plan or a central clearing house upon termination of employment. Emphasis is on the word "vested." Portability is a very misunderstood concept. Many think of it as allowing employees to count all service with all employers as qualifying for a pension benefit. Portability is NOT the ability to transfer all pension benefits accrued. Unless an employee has *vested* benefits, there is nothing to transfer.

Many argue that portability is unnecessary if an employee is vested and that efforts should be concentrated on seeing that vesting provisions are adequate. If employees change jobs with vested benefits, they will receive benefits from each of the various plans when they retire.

One argument advanced for portability is that if the worker dies before reaching retirement age, the vested pension benefits can be forfeitable, but, if they were portable and had been transferred, they would be made available to the worker's survivors. This could be accomplished without portability, however, simply by prohibiting vested benefits from being forfeitable at death.

Portability is sometimes confused with the concept of "reciprocity." Under reciprocity agreements, several plans, usually covering members of local unions of the same international union, agree to give pension credit for service under any of the plans.

Inflation

Social Security benefits increase after award according to increases in the Consumer Price Index (CPI). Private pensions are seldom protected this way against inflation. Sometimes retirees receive an increase in their benefits. Usually such increases are not automatically provided for in the plan. They are generally provided at the employer's initiative or as a result of collective bargaining and seldom do they keep pace with inflation. In 1979 the inflation rate, as measured by the CPI, was over 13 percent. In January 1980, it was 18 percent. An inflation rate of 10 percent would cut the purchasing power of fixed benefits in half after little more than 7 years. The life expectancy of women at 65 is 18 years (as compared with 13.7 years for men). Women are thus more vulnerable to inflation than men because of their longevity alone.

A bill, S. 209, the proposed ERISA Improvements Act of 1979, would require a study of the feasibility and ramifications of requiring private pension plans to provide cost of living adjustments.

Individual Retirement Plans (IRA's)

As mentioned before, women are likely to be employed by employers with no pension coverage. Before ERISA, if you were not either self-employed (and thereby eligible to set up a Keogh plan for yourself) or covered by a retirement plan at work, you were out of luck.

ERISA allows employed individuals not currently covered by a private or governmental pension plan (other than Social Security and Railroad Retirement plans) to set up their own tax-deferred individual retirement plans (called IRA's). Eligible employed individuals may put as much as 15 percent of their compensation into an IRA up to a top of $1,500 a year and take a tax deduction for that amount. The interest and earnings are also tax deferred until received at retirement when individuals are usually in a lower tax bracket.

Since many participants who are covered by private pension plans have no assurance that they will become vested and ultimately receive benefits, many would like to contribute to an IRA and consider it inequitable that they cannot. Also, employees in plans with very small benefits are often interested in IRA's. Proposals to allow participants in pension plans to contribute to IRA's under certain circumstances have been made. The Treasury Department has been opposed to proposals to expand IRA eligibility.

Pension Issues Affecting Women as Spouses

I said that there were two ways that women could receive pension benefits—and that one way is as an employee's spouse. While the retiree is alive the pension is shared with the spouse. But what happens to the pension if the retiree dies? And, what are the rights of the spouse to the pension money in event of divorce?

After the Retiree Dies

First, let's discuss what happens when the retiree dies.

The data has been skimpy on the number of widows receiving pensions. The estimate for pre-ERISA days was less than 5 percent. Whether this percentage has increased appreciably since ERISA is unclear.

Before ERISA some pension plans made no provision for continuing any part of a retiree's pension to the surviving spouse after the retiree's death. ERISA requires that most pension plans which provide benefits in the form of an annuity must also provide for a joint and survivor annuity.

A joint and survivor annuity can be provided at no cost to the plan. Under a joint and survivor option the employee elects to have the amount of the pension benefit reduced during his (or her) lifetime to provide the surviving spouse with part of the retiree's pension after his or her death. The survivor annuity is required under ERISA to be 50 percent of the amount taken in the form of a joint and survivor annuity. So, if a pension plan provided, say, $100 in the form of a single life annuity (under which no payments would be made after the retiree's death), it might provide, say, $80 in the form of a joint and survivor annuity during their joint lives, paying half of that, $40, to the surviving spouse after the retiree's death. Some plans subsidize the joint and survivor option by reducing the employee's pension less than the full cost of the joint and survivor option.

Before ERISA, all too often, when a plan provided for a joint and survivor annuity, the employee was required to take certain steps before retiring in order to provide the spouse with a survivor annuity. When the employee neglected to meet or was not aware of these requirements, the surviving spouse was left unprotected. ERISA reverses the consequences of inaction so that, for most employees who retired from covered employment within a specified period or reach the plan's normal retirement age while covered by the plan, the joint and survivor annuity must be automatic unless the employee rejects it in writing.

The choice of the survivor option can be solely the employee's. The law allows plans to provide that the employee may reject the survivor option without the spouse's consent or knowledge. And, although ERISA requires that the employee be informed of the financial consequences of selecting or rejecting the option, ERISA does not require that the spouse be so informed.

In addition to those who lose a survivor annuity because the retiree rejected it, there are some spouses who are not protected on other grounds.

First, since ERISA allows plans to require that the participant and the spouse be married 1 year on the annuity starting date and before the retiree's death, divorced spouses can be left without a survivor annuity even when the retiree is willing to provide it or has possibly already taken a reduction in benefits to do so. Second spouses can be left with no survivor annuity if married after the annuity starting date and less than a year before the retiree's death.

Second, some spouses lose the survivor annuity because the employee dies too early. Pension benefits attributable to employer contributions need not be vested if the employee dies before becoming eligible for the joint and survivor annuity. So, if a plan does not provide for early retirement and the employee dies before retiring or reaching normal retirement age, the surviving spouse can be left with no survivor annuity. The employee's vested benefits go into the pension pool to reduce the employer's cost.

If a plan provides for early retirement and the employee dies before reaching the later of early retirement age or 10 years before the normal retirement age of the plan, no survivor annuity need be provided. So plans can provide that an employee completely vested at age 54 will forfeit all pension benefits at death (while a co-worker, also vested with the same number of years of service and the same age who leaves the company for another job, will be able to provide a survivor annuity if the employee lives long enough to retire or become eligible for a joint and survivor annuity).

Third, ERISA allows plans to provide that a participant's election of an early survivor annuity is not effective if the participant dies within 2 years of the election—with some exceptions. (An early survivor annuity is an annuity provided for a spouse of an employee who continues in the service of the employer after being eligible for early retirement. The joint and survivor annuity need not be automatic for the period the employee continues to work after becoming eligible for early retirement and prior to the plan's normal retirement age. The employee can be required to elect the early survivor annuity to protect the spouse during this period. In the case of an election of the early survivor annuity, plans are allowed to further reduce the retiree's pension payment to reflect the number of months of coverage under the early survivor annuity or charge the participant premiums for the protection.)

So, ERISA's joint and survivor provisions merely see to it that if a worker lives long enough to be eligible for a joint and survivor annuity, and if a worker is willing to take a cut in the amount of the pension to provide for a survivor annuity, and if the worker remains married to the spouse, and if the worker does not die within 2 years of electing the option, the spouse will get one half of the amount of the worker's reduced pension designated for joint and survivor benefit. Many women believe that, while ERISA's joint and survivor provisions are some improvement over the past, there are too many "if's"—and too many uncalled for reductions.

Divorce

The skyrocketing divorce rate has left many women in harsh economic straits, particularly older women who spent their lifetimes as homemakers.

As I mentioned before, ERISA allows plans to provide no survivor annuity for a divorced spouse. What about the divorced spouse's right to the pension money while the retiree is alive? ERISA itself does not give a divorced spouse a right to the pension earned during the marriage. The question then arises only in community property states and marital property states. And the question is whether ERISA precludes or allows the value of the pension to be considered and the amount divided in property division at divorce.

The question arises because of two ERISA provisions—the alienation and assignment provisions and the preemption provisions. ERISA prohibits alienation and assignment of pension benefits so that pensioners are protected from losing pension income to creditors. The alienation and assignment provisions contain no express exemption for property division awards. The preemption provisions preempt state laws relating to employee benefit plans.

Both the Labor Department and the Internal Revenue Service have taken the position that there is an implied exemption to the alienation and assignment provisions for property division at divorce. Because of this implied exemption, the preemption provisions of ERISA need not be considered. The bottom line is that both the Department of Labor and the IRS have taken the position that the value of the pension can be considered and the amount divided in property division at divorce. This means that when the retiree starts to receive benefits, the amount awarded to the divorced spouse is paid to her. When the retiree dies, however, payments to the divorced spouse can cease. Since the employee may die before ever receiving any pension benefits or shortly after payments have begun, divorced spouses are sometimes better off accepting other property (say, the house) if there is any, in lieu of the pension. The lower court in *Stone v. Stone* endorsed the position taken by the Department of Labor and the IRS.*

Another question is whether ERISA allows or precludes the payment of alimony and child support from the pension plan, deducting the amount from the retiree's pension. The question of paying alimony and child support payments by the pension plan comes up only if the pension is in pay status. Although ERISA contains no express exemption from the alienation and assignment provisions for alimony and child support, again the Department and the IRS have taken the position that there is an implied exemption for family support. The two agencies stated this position in an amicus brief in *Cartledge v. Miller* and the view was accepted by the court.

The pension industry's interest in the matter is that the law be clear so that pension plans will not be in violation of ERISA in honoring court orders. S. 209 would amend ERISA to make clear the law on this point.

Divorced spouses in states which are not community or marital property states will not have access to the spouse's pension as a property right. They will have access only through alimony and child support unless ERISA is amended to require divorced spouse benefits.

IRA's for Homemakers

Starting January 1977, employees eligible for an individual retirement plan (IRA) may contribute for a nonemployed spouse and the contribution maximum is 15 percent of compensation up to a top of $1,750 for those who do. The purpose is to provide retirement income for nonemployed homemakers. Equal amounts—up to $875 each—are deposited into separate accounts for the employee and the nonemployed spouse or into one account with subaccounts for each. In a divorce the homemaker keeps her (or his) share of the money.

While this option is helpful to some homemakers, critics have pointed out that the total maximum IRA contribution was raised only $250, from $1,500, to encourage contributions for homemakers.

*The appeals court ruled in favor of the ex-wife.

CONCLUSION

These then are the pension issues of particular interest to women. The ERISA minimum standards on participation, vesting, break in service, benefit accrual, and joint and survivor will improve the situtation of women with regard to pension income—but still these standards do not take into account the employment patterns of many women and the growing divorce rate. So there are still issues to be resolved. Although some plans are more liberal than the law allows, many (probably most) are not.

To sum up, if you work for a company which maintains a pension plan, and if you are not excluded from participating in that plan, and if you are employed under that plan long enough without a break in service to become vested, and if your entire pension is not wiped out by integration with Social Security, you will receive a pension when you retire.

If you are a homemaker, you will benefit from your spouse's pension if he is covered by one, stays married to you, doesn't die too soon to receive benefits, and is willing to take a reduction in his pension to provide you with a survivor annuity.

Changes which would substantially affect the likelihood of women receiving pensions based on their employment are:

(1) lowering the age and service requirements for plan participation to allow women to count the years of heaviest labor force participation (before age 25);

(2) counting towards vesting all years of service with employer maintaining the plan—instead of eliminating years before age 22;

(3) shorter vesting periods;

(4) liberalizing the break-in-service rules, so that a break could not have the effect of wiping out pre-break service;

(5) changing the integration rules so that employees cannot be totally integrated out of receiving plan benefits; and

(6) liberalizing eligibility rules for IRA's.

The following are some changes which would be helpful to homemakers:

(1) prohibiting forfeiture of vested benefits upon an employee's death;

(2) prohibiting plans from precluding participants from providing survivor benefits for a divorced spouse;

(3) seeing that spouses are informed of any refusal of the survivor option;

(4) even better, removing the costs to the participants in providing the survivor pension for the spouse; and

(5) liberalizing IRA rules for homemakers.

Most of the problems or shortcomings of the private pension system are really social issues—the relatively low earnings of women compared to men, the growing divorce rate, the fact that women are frequently in the homemaker role. Nevertheless, many believe these conditions call for a review of the private pension system.

The Department of Labor has in process a study of the role of private pensions in meeting the economic security needs of women. The goal of the study is to develop information from which to make recommendations concerning women and private pension plans. Even without this study, the Department has supported many proposals to liberalize various ERISA rules.

AREA OFFICES

Below is a list of area offices of the U.S. Department of Labor, Labor-Management Services Administration (LMSA). Consult your local telephone directory listings under United States Government for the address and telephone number of the LMSA office nearest you:

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