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# INTRODUCTION

*“We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.”*

—President Roosevelt upon the signing of the Social Security Act of 1935<sup>1</sup>

On August 14, 1935, Franklin D. Roosevelt signed the Social Security Act of 1935 (the Act) into law. At the time of the Act’s enactment, its purpose was “[t]o provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws, to establish a Social Security board, to raise revenue, and for other purposes.”<sup>2</sup> In 1937, the Act’s constitutionality was upheld in a series of three Supreme Court cases challenging the old-age insurance program and unemployment compensation programs, finding that these programs were permissible exercises of the federal spending power for the purpose of the general welfare.<sup>3</sup>

Over the ensuing decades, the Act evolved dramatically to meet the changing needs of society. When it was passed in 1935, about half of workers participated in the program. Today, about 93 percent of workers participate.<sup>4</sup> The original Act only provided retirement benefits for the individual worker

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1. Soc. Sec. Admin., *Social Security History: Presidential Statement Signing the Social Security Act—August 14, 1935*, SSA.gov, <https://www.ssa.gov/history/fdrsinststate.html> (last visited Apr. 25, 2020).

2. Soc. Sec. Admin., *Legislative History: Social Security Act of 1935*, SSA.gov, <https://www.ssa.gov/history/35actpre.html> (last visited Apr. 25, 2020).

3. *Helvering v. Davis*, 301 U.S. 619, 641–44 (1937); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937); *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495 (1937).

4. Soc. Sec. Admin., *The Development of Social Security in America*, SSA.gov, <https://www.ssa.gov/policy/docs/ssb/v70n3/v70n3p1.html> (last visited Apr. 25, 2020).

and not for the workers' family members.<sup>5</sup> Over time, the Act expanded to add, among other things, dependent and survivor's benefits (1939), disability benefits for workers and their dependents (1956, 1958), and automatic cost-of-living adjustments (1972).

The current stated purpose of Social Security is fourfold: (A) to provide for the material needs of individuals and families; (B) to protect aged and disabled persons against the expenses of illnesses that may otherwise use up their savings; (C) to keep families together; and (D) to give children the chance to grow up healthy and secure.<sup>6</sup>

Social Security includes the following programs:

- A. Retirement insurance;
- B. Survivor's insurance;
- C. Disability insurance;
- D. Hospital and medical insurance for the aged, the disabled, and those with end-stage renal disease;
- E. Prescription drug benefit;
- F. Extra help with Medicare prescription drug costs;
- G. Supplemental security income;
- H. Special veteran's benefits;
- I. Unemployment insurance; and
- J. Public assistance and welfare services, including
  - a. Temporary assistance for needy families;
  - b. Medical assistance;
  - c. Maternal and child health services;
  - d. Child support enforcement;
  - e. Family and child welfare services;
  - f. Food stamps; and
  - g. Energy assistance.<sup>7</sup>

Generally speaking, the following individuals are eligible for monthly Social Security benefits:

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5. *Id.*

6. SOC. SEC. ADMIN., SOCIAL SECURITY HANDBOOK 2019 § 100.1 (2019).

7. *Id.* § 100.2.

- A. A disabled insured worker who has not reached full retirement age;
- B. A retired insured worker age 62 or over;
- C. The spouse of a retired or disabled worker entitled to benefits who
  - a. Is age 62 or over; or
  - b. Has in care a child who is either under age 16, or over age 16 and disabled and who is entitled to benefits on the worker's Social Security record;
- D. The divorced spouse of a retired or disabled worker entitled to benefits if he or she is at least 62 and has been married to the worker for at least ten years;
- E. The divorced spouse of a fully insured worker who
  - a. Has not yet filed a claim for benefits if both parties are at least 62;
  - b. Was married for at least ten years; and
  - c. Has been divorced for at least two years in a row;
- F. The dependent, who is an unmarried child of a wage earner who is retired or disabled or a deceased insured worker, is entitled to benefits if he or she is
  - a. Under age 18;
  - b. Under age 19 and a full-time elementary or secondary school student; or
  - c. Age 18 or older but under a disability that began before age 22;
- G. The surviving spouse (including a surviving divorced spouse) of a deceased insured worker age 60 or older;
- H. The disabled surviving spouse (including a surviving divorced spouse in some cases) of a deceased insured worker age 50–59 who become disabled within a period specified;
- I. The surviving spouse (including a surviving divorced spouse) of a deceased insured worker, regardless of age, if caring for an entitled child of the deceased who is either under age 16 or disabled before age 22; or
- J. The dependent parents of a deceased insured worker age 62 or over.<sup>8</sup>

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8. *Id.* § 119.

In addition, individuals who are aged, blind, or disabled, with limited income and resources, are eligible for monthly benefits under the Supplemental Security Income (SSI) program.

This book is an update of Carlton D. Stansbury's meticulously researched *The Family Law Practitioner's Guide to Social Security*, originally published in 1995. In writing this update, I have largely reproduced Mr. Stansbury's original ideas, although I have rewritten certain sections in my own words as I have worked through the material. I have provided updates to statutes and case law where applicable, as well as my own analysis on some of the issues discussed. However, the broader research and ideas, along with the structure and the presentation of the materials, are substantially based on Mr. Stansbury's 1995 version.

This book aims to explain the various Social Security programs and provide examples of how they impact the practice of family law. A working knowledge of Social Security benefits and how they work is an important tool in any family law practitioner's toolbox. For example, while Social Security benefits are not considered marital property to be divided at divorce, they are considered income and are therefore a source of child support, spousal support, and/or alimony. It is important to know when and under what circumstances your client can begin to collect Social Security and Medicare benefits. And it is important to know when and under what circumstances benefits can be paid to a worker's spouse, divorced spouse, surviving spouse, surviving divorced spouse, and/or children. There are complex rules regarding when and how these "derivative" benefits can be paid, and a family lawyer should be familiar with these rules so that they can properly advise their clients.

Chapter 1 of this book provides information about Social Security benefits generally, including how one becomes insured for benefits and how benefits are paid. Chapter 2 delves into derivative benefits, including benefits for the spouse, the divorced spouse, the surviving spouse, the surviving divorced spouse, mothers and fathers, children, grandchildren, and same-sex couples. Chapter 3 explains the process of determining who is entitled to derivative benefits, as there is not always a straightforward answer, and there is considerable case law on this issue. Chapter 4 explains the evidence that is required by the Social Security Administration to determine eligibility for benefits. Chapter 5 deals generally with Social Security disability, SSI, and Medicare. Finally, Chapter 6 explains how Social Security benefits are allocated in the family law context, including how they are treated in divorce, alimony, and child support cases.

In updating this book, I have relied primarily upon the sources used by Mr. Stansbury in the 1995 version: the Act, the Code of Federal Regulations,

the Social Security Handbook,<sup>9</sup> and case law. Note that many rules that are discussed appear in various forms in all four of these sources, but generally, only one source is cited. Additionally, much of the new information I have added is based on various publications of the Social Security Administration and online resources, which were not as readily available in 1995.

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9. The Social Security Handbook includes the provisions of the Social Security Act, regulations under the Act (found in the Code of Federal Regulations), and precedential case law. It includes what its publishers believe to be the most common and helpful information related to Social Security. In case of a conflict between the Handbook and the rules, regulations, and case law, those materials will prevail. This book cites to the 2019 version of the Handbook, which is the latest hardcopy version available. After 2019, it is only available online, with updates made on an ongoing basis. The current version of the Social Security Handbook can be found at [https://www.ssa.gov/OP\\_Home/handbook/handbook.html](https://www.ssa.gov/OP_Home/handbook/handbook.html).