Social Security Claiming Under the New Rules

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On November 2, 2015, the Bipartisan Budget Act of 2015 was passed into law. In addition to budgetary provisions, the law closed certain "loopholes," which changes the way married couples and divorced individuals may take advantage of Social Security benefits.

Once the law is fully phased in, a high-earning spouse or divorced individual will no longer be able to receive a spousal benefit if his or her own retirement benefit is higher.

In addition, a person may no longer file and suspend for the purpose of entitling a spouse to spousal benefits or to claim suspended benefits in a lump sum at a later date.

Background

When spousal benefits were first introduced in 1939, the idea was to give a low-earning or nonworking wife access to 50% of her husband's Social Security benefit. (Social Security benefits are gender-neutral, but in 1939 it was generally the wife who did not work.)

Two key provisions accompanied this amendment. In order for a wife to receive a spousal benefit, 1) the husband must be "retired," that is, he must have filed for his Social Security benefit; and 2) if the wife also qualified for a benefit on her own work record, that benefit must not exceed the spousal benefit. For decades, these conditions had to be met in order for spousal benefits to be paid.

In 2009, two papers were released by the Center for Retirement Research at Boston College suggesting that spousal benefits could be claimed even if those conditions had not been met. In "Strange But True: Claim and Suspend Social Security," the popular "file and suspend" strategy was born. Under file-and-suspend, a husband could file for his benefit, thus meeting the filing requirement for spousal benefits. Then, as long as he was over full retirement age (FRA), he could immediately suspend it to build 8% annual delayed credits.

This voluntary suspension was authorized by the Senior Citizens' Freedom to Work Act of 2000. Its purpose was to allow people who had claimed Social Security and later gone back to work to suspend their benefit to build delayed credits. But when combined with the rule for spousal benefits it allowed a wife to start her spousal benefit even while the husband's benefit is building delayed credits.

The other paper was "Strange But True: Claim Social Security Now, Claim More Later." This paper suggested that by filing a "restricted application" for the spousal benefit, a high-earning spouse can receive 50% of the other spouse's primary insurance amount (PIA) while his own benefit builds delayed credits. The rule allowing a person to file a restricted application at full retirement age is in a completely separate part of the Social Security rulebook, and originally had nothing to do with spousal benefits. But when combined with the rule authorizing spousal benefits, it allows a high-earning spouse to receive a spousal benefit for four years, from age 66 to 70, even if his own benefit is higher.

These two strategies – file and suspend and restricted application – have given couples as much as $60,000 in additional Social Security benefits which were not really intended by the law.

With the passage of the Budget Act, these loopholes are being closed. Though file-and-suspend is now closed for good, the changes for "claim now, claim more later" are still being phased in, which means some people will still be able to take advantage of them. To summarize,

- File-and-suspend has been closed as of April 29, 2016. Spousal benefits cannot be paid based on records suspended after the April 29 deadline. Going forward, voluntary suspension will return to its original purpose: Allowing those who already filed but regret it a chance at earning delayed retirement credits.
- Restricted application will be available to you if you had attained age 62 by the end of 2015; that is, you were born on or before January 1, 1954. This will allow you to receive a spousal benefit even if your own benefit is higher.

Note: Many people have been incorrectly using the term file-and-suspend when they really mean restricted application. If you want to receive a spousal benefit off your spouse's work record while your own benefit builds delayed credits, you do not want to file and suspend. Rather, you want to file a restricted application for your spousal benefit.

What to do now

If you were planning on doing the file-and-suspend strategy — that is, you were going to file for your benefit at FRA and immediately suspend it so your spouse could start spousal benefits while your benefit continued to build delayed credits — you are now faced with a choice. You can either go ahead and claim your benefit at FRA so your spouse can start spousal benefits, or you can delay your benefit to age 70 to build 8% annual delayed credits. In other words, you are now faced with a choice between spousal benefits and delayed credits. The spousal benefits may provide income sooner, but the delayed credits may be worth more in the long run, especially if you are trying to maximize survivor benefits for the longer-lived spouse.

If you were planning to file a restricted application for spousal benefits at FRA, and if you were born before January 2, 1954, this strategy remains available to you.

How to file a restricted application

The Budget Act allows anyone who had attained age 62 by the end of 2015 to file a restricted application for spousal benefits when they turn FRA.

This strategy may be appropriate for you if:

- You were born on or before January 1, 1954, and
- Your PIA is more than 50% of your spouse's PIA, and
- You are planning to claim your Social Security benefit at age 70 to earn maximum delayed credits, and
- You would like to receive a spousal benefit of 50% of your spouse's PIA from age 66 to 70 and switch to your own maximum benefit at 70.

If you meet these criteria, you can file a restricted application for your spousal benefit when you turn FRA. To file a restricted application, go to www.ssa.gov and click on "Apply for Retirement." Fill out the application for benefits. Where it asks if you are also eligible for spousal benefits do you want to delay your own retirement benefit, click "yes."

Savvy spousal planning can give married couples tens of thousands of dollars in additional lifetime Social Security benefits, depending on your respective ages and PIAs. But you have to know the rules as they apply to you, and you have to perform certain actions by certain dates, especially now that the Budget Act is phasing out key strategies.

Ask your financial advisor to do a Spousal Planning Analysis which lays out possible strategies for when to claim retirement benefits and how to take advantage of spousal benefits. Incorporate this analysis into your overall retirement income plan with the objective of ensuring an adequate income stream throughout retirement.

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