Social Security Claiming Under the New Rules

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By Elaine Floyd

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 not 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.

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 can file for his benefit, thus meeting the filing requirement for spousal benefits. Then, as long as he is over full retirement age (FRA), he can 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 allows 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. But they are not being closed all at once. The rule changes are being phased in, which means some people will still be able to take advantage of them. The purpose of this article is to identify couples who are grandfathered for file-and-suspend and/or restricted application so you can take advantage of them to receive spousal benefits if you are able to do so. In general,

- **File-and-suspend** will still be available to you if you will be full retirement age (66) by **April 29, 2016.**

- **Restricted application** will be available to you if you have 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.

Phaseout of file-and-suspend

Under the Budget Act, spousal benefits will not be paid based on a benefit suspended after April 29, 2016. Since you must be over FRA to suspend, you must be age 66 or older by April 29, 2016, to take advantage of this strategy.

Consider this:

- If you will be age 66 or older by April 29, 2016 *and*

- You are planning to claim your Social Security benefit at age 70 to earn maximum delayed credits, *and*

- You have a spouse who, at some time in the future, will want to claim a spousal benefit based on your record,

You should file and suspend your benefit before April 29, 2016. This will allow your spouse to claim a spousal benefit even while your benefit builds delayed credits.

To file and suspend, go to www.ssa.gov, and click on "Apply for Retirement." Fill out the application for benefits. Where it asks when you want your benefit to start, enter the month and year you will turn 70. In the comments section state that you want to file and suspend your benefit in order to earn delayed credits.

Caveat #1: If there is a chance that you will want to file a restricted application for your spousal benefit, do not file and suspend. Doing so will negate your ability to file a restricted application. A key part of Social Security spousal planning is determining which spouse should take the spousal benefit. Your financial advisor can help you with this.

Caveat #2: Filing for Social Security will automatically enroll you in Medicare Part A. If you or your employer is contributing to a health savings account (HSA), those contributions would have to stop. The Part A enrollment would be retroactive six months; to avoid penalties, contributions for that period would have to be removed by your tax filing deadline.

Phaseout of 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.

Consider this:

- If you were born on or before January 1, 1954 *and*
- If your PIA is more than 50% of your spouse's PIA, *and*
- If 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 to 50% of your spouse's PIA from age 66 to 70

If you meet the bulleted criteria, you should 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 which benefit you are filing for, check "spousal benefit."

Coordinating benefits with your spouse

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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