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Clarifications on the Budget Act of 2015

By Elaine Floyd, CFP®

It's been seven years since Congress passed the Bipartisan Budget Act of 2015 ushering in a number of Social Security changes.

The main thrust of the legislation was to disallow strategies that took advantage of spousal benefits in a way that was not intended by the original legislation passed in 1939. Spousal benefits were instituted to give nonworking or low-earning spouses a benefit equal to 50% of the working spouse's primary insurance amount (PIA). But certain loopholes in the law allowed higher-earning spouses to collect a spousal benefit—if they knew what to do.

As these strategies were publicized and it became recognized that only higher-income couples (who had financial advisors) were doing them, Congress changed the rules. But rumors continue to circulate, and many people think they can get spousal benefits when they cannot. SSA adds to the confusion by giving out wrong information over the phone and continuing to pay spousal benefits while the worker-spouse's benefit is in suspension, something the Budget Act specifically disallowed.

'CAN I GET A SPOUSAL BENEFIT?'

The most pertinent aspect of spousal benefits post-Budget Act is that when a person files for benefits they will be paid

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their own benefit first. This, of course, stops the accumulation of delayed credits. So the answer to the question “can I get a spousal benefit while my own benefit grows?” is an unqualified “no.” When you file for Social Security, you will be paid your own benefit first, reduced if you are claiming before FRA.

If you are also entitled to a spousal benefit—by virtue of the fact that your own PIA is less than 50% of your spouse’s PIA and your spouse has previously filed—you will be paid that difference on top of your own benefit, also reduced if under FRA.

The only exception is if you were born before January 2, 1954. If so, you were grandfathered under the old rules. If you have not yet filed, and if your spouse has filed for their benefit, you can file a restricted application for your spousal benefit and receive 50% of your spouse’s PIA while your own benefit builds delayed credits to age 70.

If your PIA is more than 50% of your spouse’s or ex-spouse’s PIA, you will not ever be paid a spousal benefit. Period. We commonly get questions from divorced people who were married over ten years who wonder if they can get a spousal benefit while their own benefit grows. Again, the answer is no—they must take their own benefit first. And if their own PIA is more than 50% of the ex’s PIA, they will not ever be able to get a spousal benefit.

WHAT ABOUT FILE-AND-SUSPEND?

Under the old rules a higher-earning spouse could file for their benefit and immediately suspend it. The filing triggered the spouse’s entitlement to spousal benefits. The suspension allowed the filer’s benefit to keep building 8% annual delayed credits to age 70. So the strategy allowed the lower earner to receive a spousal benefit even while the higher earner’s benefit was building delayed credits.

The Budget Act disallowed this strategy by not allowing spousal benefits to be paid while the worker’s benefit is in suspension. This applies to all suspensions after April 29, 2016. But apparently SSA’s systems did not get updated and in some cases they have continued to pay spousal benefits when they shouldn’t have. Now some people are getting letters saying they have been overpaid and SSA is demanding repayment of those spousal benefits. Even though the overpayment was SSA’s fault, those monies must be paid back.

HOW DO I SWITCH FROM SPOUSAL TO OWN?

Maybe you were one of the lucky ones, born in 1953 or earlier and grandfathered under the old rules. You’ve been receiving spousal benefits and now you’re about to turn 70 and wondering how to switch to your own benefit.

All you have to do is go online at ssa.gov and follow the instructions for filing. It’s very easy and very intuitive. It takes about 15 minutes. You can mention in the comments that you are currently receiving a spousal benefit, but it really isn’t necessary. You can file your application up to three months prior to your 70th birthday. In your application say that you want benefits to start as of your birthday month. This will ensure that you get maximum delayed credits. Your first check will be deposited into your bank account one month later on the second, third, or fourth Wednesday depending on the day of the month you were born. (It may be a different Wednesday than your spousal benefit, which is paid to you based on the day of the month your spouse was born.)

SURVIVOR BENEFITS NOT AFFECTED

Survivor benefits were never part of the Budget Act changes. It is still possible for a widow (or a divorced person who was married more than ten years and whose ex has died) to file a restricted application for survivor benefits, thus allowing their own benefit to build delayed credits to age 70. Or they can do the opposite: start their own benefit at 62 and switch to their survivor benefit at FRA. The key is to take the higher benefit last because that’s the benefit that will stick with you into your old age.

Elaine Floyd, CFP® is Director of Retirement and Life Planning for Horsesmouth, LLC, where she helps people understand the practical and technical aspects of retirement income planning.

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