Social Security in the Crosshairs: New Rules Require New Strategies

The "Bipartisan Budget Act of 2015" signed into law by President Obama on November 2, 2015, contains provisions that will eliminate and/or curb two Social Security filing strategies that married couples may have been using -- or counting on -- to increase their lifetime Social Security payouts.

It is important to note that there is a six-month grace period in which these strategies will still be in effect in their current iterations.

The two claiming options, referred to in the bill as "unintended loopholes" of previous legislation, generally involve one of the following strategies: file and suspend or restricted application for spousal benefits. As with most things related to federal programs, there's complexity in the details.

Here are a few key points of explanation about the strategies, how the new law will change and/or eliminate them, as well as some considerations you may want to discuss with your advisor.

The Strategies in Question

Very generally, the strategies in question allow both spouses who have reached full retirement age (currently 66 for most claimants) to delay claiming benefits on their own earnings records -- and thus increase their individual annual payouts -- while also allowing one spouse to claim a so-called spousal benefit based on the other's earnings.

Under the file and suspend provision, for instance, Spouse A, typically the primary earner, would start receiving Social Security payments and then immediately suspend them, allowing Spouse B to claim spousal benefits on Spouse A's earnings record. Under restricted application for spousal benefits, Spouse A might claim the spousal benefit on Spouse B's earning record while allowing his or her own benefit to continue growing.

In both scenarios, the end game for a two-income, married couple is to delay receiving benefits on their own accounts, perhaps as late as age 70. Such a tactic could increase the couple's eventual Social Security payments by 6% to 8% per year, potentially adding thousands of dollars of income over their lifetimes.

Game-Changing Rules

While married couples will still be able to suspend their own payments and start up again at a higher rate no later than age 70, under the new rules individuals generally will no longer be able to receive spousal benefits while their own benefits are suspended or allow a spouse or other dependent to claim Social Security benefits on their work record until they resume payments again.[1] Going forward, experts assert the primary use of file and suspend will be for those individuals who claimed benefits early and want to increase future Social Security payments for themselves and/or a surviving spouse or other dependent.[2]

Six-Month Grace Period

It is important to note that there is a six-month grace period in which these strategies will still be in effect in their current iterations. So if you are 66 now, or will turn 66 by the April 30, 2016, deadline you may want to speak with your advisor about taking advantage of one of these claiming options before you lose the chance to do so.

Another window of opportunity exists for individuals who will be 62 or older as of December 31, 2015. If you are among them, you may still be able to take advantage of these strategies in some way once you reach full retirement age. If, however, you turn 62 in 2016 or later, you will not be able to use either filing strategy.[3]

Keep in mind that those who are already employing these strategies are generally "grandfathered," and their benefits will not be eliminated or changed by the new laws. Similarly widows and widowers generally won't be affected, while divorced persons and same-sex married couples may be among the groups most adversely affected by the changes.

At a Disadvantage

As the law now stands qualified divorced spouses who are at full retirement age and entitled to both their own retirement benefits and spousal benefits can elect to temporarily claim just spousal benefits while allowing their own retirement benefit to accrue delayed retirement credits until age 70. Under the new law -- depending on the age of the individual and other factors -- access to this strategy may be denied.

For some same-sex couples the problem is timing. In order to qualify for spousal Social Security benefits a couple must have been married for at least one year. The federal government (including the Social Security Administration) has just earlier this year recognized the legality of same-sex marriage. This fact leaves many couples shy of the one-year mark -- and the April 30, 2016, deadline -- that would qualify them to exercise the strategies mentioned here.

Seek Professional Advice

While determining when and how to claim Social Security benefits has always been a challenging task, these new rules create even more complexity for those nearing retirement. If you had planned on using one of these strategies to help maximize your retirement income or need general assistance navigating the changing Social Security landscape, speak with your financial advisor.

[1]*U.S. News & World Report*, "How the Budget Deal Changes Social Security," November 13, 2015.

[2] *Investment News,* "Social Security changes present opportunities," November 27, 2015.

[3] *The Christian Science Monitor,* "Social Security 'file and suspend' rules changed: what you need to know," November 30, 2015.