

## Social Security Commentary

The Social Security Act as signed into law in 1935 was designed to provide adequate financial assistance to the elderly, poor, unemployed, widowed and fatherless children. Its original purpose was to help those in need; nevertheless it tied entitlement closely to contribution and paid benefits only to retired workers. In 1939 Congress relaxed the benefit-contribution relationship by adding spousal benefits. These supplemental payments were based on what the system could afford and the implicit notion that married couples required more money than single retirees. The inequities thus created - single workers and dual-earner couples reaped no advantages yet contributed no less and sometimes more than single-worker couples - seemed a small matter at a time when the social security payroll tax was only 1% of the first \$3000 of annual wages.

Social Security has been changed many times, aside from its first amendment in 1939. In 1965 revisions established the Medicare and Medicaid programs. In 1972 an annual cost-of-living-adjustment was added, and in 1983 the law was altered so that henceforth benefits would be considered taxable income. In 2000 The Senior Citizens Freedom to Work Act repealed the limitation on the amount of outside income which beneficiaries who have attained Full Retirement Age could earn without a reduction in benefits. It also legislated that a person over FRA could voluntarily suspend benefits and earn delayed credits (8% per annum) for any month he requested not to be paid until age 70.

An amalgam of the supplemental spousal benefit and the intentional cessation of one's own benefit led to the creation of two strategies designed to increase a married couple's aggregate lifetime Social Security payouts. The first of these is known as "file and suspend": the worker-beneficiary files for but does not claim retirement benefits, allowing the spouse to collect a spousal benefit (spousal benefits are not available until the worker-beneficiary files). The worker-beneficiary then suspends his own benefit, allowing him to earn the 8% delayed credits until age 70. The second strategy, called "restricted filing", enables a worker-beneficiary whose spouse is already collecting a benefit based on her own employment history to receive a spousal benefit while delaying his own.

As an example of the file and suspend strategy, we will use a traditional married couple, Mr. and Mrs. Smith, in which the husband is employed and the wife stays home to maintain the household. Both are at Full Retirement Age. Mrs. Smith is allowed a spousal benefit of 50% of Mr. Smith's benefit even though she has no earnings history of her own. As Mr. Smith is still working, he has no need to collect his Social Security, but the couple would like to supplement his wage income. Mr. Smith therefore files for his own Social Security benefit, permitting Mrs. Smith to collect her spousal benefit, and then immediately suspends it. By doing so he receives an annual delayed credit of 8% and, as an added blessing, locks in a higher survivor benefit, assuming he dies a few years afterward.

For the restricted strategy, we return to the Smiths, only this time Mrs. Smith has her own employment history. She wants to collect, *on her own record*, but Mr. Smith does not. He can, however, file a restricted application to claim a spousal benefit while again postponing his own and receiving the delayed credit. Key points to consider with both approaches is that the party who files and “suspends” or “as restricted” must be at Full Retirement Age and that a married couple is limited to one spousal benefit.

U.S. lawmakers seldom pass legislation curtailing benefits for its citizenry, as any candidate for office promoting a platform of fiscal restraint will die a quick death. It was somewhat surprising then that Congress effectuated on November 2<sup>nd</sup>, 2015 the Bipartisan Budget Act, eliminating the two strategies (derisively termed “unintended loopholes”) in the signed bill. The AARP supported the changes, noting that it would affect only a small group of retirees. This may be true, if only because the claiming rules are so complex and Social Security Administration workers are not “at liberty to substitute their own judgment or opinion for rulings, regulations or the law”. Social Security has been described as the one product all Americans buy yet none understand.

Those already receiving spousal benefits or who have filed and suspended are not affected by the new rules. For those fortunate to be 62 or older, there is time to take action. Worker-beneficiaries already 66 or who turn 66 before April 30<sup>st</sup>, 2016 can still file and suspend, but must so by that date, while the restricted filing strategy remains viable to those age 62 or older as of December 21<sup>st</sup> 2015. Financial service professionals need to move fast to ensure eligible clients take advantage of an opportunity to increase their collective Social Security payouts by possibly thousands of dollars.

At a time when analysts and politicians of nearly all persuasions agree that the long term health of the Social Security system calls for revisions like eliminating the claiming strategies noted, one might expect a proposal for a change in the spousal benefit itself. Yet there have been none, no doubt because they are perceived as having a negative impact on women. The payment of a non-contributory spousal benefit is not predicated on the presence of children or financial need, and the associated tax burden falls heavily on a portion of the work force that receives no benefit from it. Spousal benefits reflect the mores and practical realities of another era. In recent decades, dramatic social, economic and legal changes have affected the profile of the American family, both at home and at work. By failing to keep pace with the changing nature of American families, Social Security’s outdated benefit structure results in single workers and dual-earner couples subsidizing the benefits of wealthier single-worker couples, adding a sharply regressive element to the present system.

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