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INFORMATION MEMO
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Maximize Your Social Security Benefits

April, 2016 Law Change Prompts Immediate Review

The Social Security old age system is a simple concept with some very complex rules. It is a near-universal arrangement, covering working Americans and their families, which provides retirement benefits for life. The basic rules require a minimum of 40 quarters of coverage – essentially 10 years of paying into the system as an employee or self-employed person. Benefits are based on your highest 35 year average of covered earnings, which determines a "primary insurance amount" or "PIA." The PIA is payable at your "full retirement age" or "FRA" which was once age 65. For individuals born in years 1943 through 1954, FRA is age 66, and it increases to age 67 for anyone born in 1960 or thereafter.

The Social Security system has been the subject of debate and political opinion. Undoubtedly, the system will be changed in years to come. Nonetheless, it is a relatively vast and stable system that is likely to endure over time. This article will be based on current Social Security laws as well as the changes adopted in late 2015 that go into effect on May 1, 2016.

Basic Rules

For a single person, with no spouse or dependents, with sufficient Social Security coverage over a working career, the system is pretty simple. The PIA is a monthly benefit payable for life beginning at FRA. If this single person is just turning 66, the unreduced PIA can start to be paid. It is subject to a cost of living adjustment or COLA that will usually increase benefits slightly each calendar year during lifetime.

If our single person were not yet age 66, benefits may still begin on or after age 62. There is a monthly reduction of 5/9 of 1% for the first 36 months benefits begin before FRA and a 5/12 of 1% reduction for each month over 36. So a person whose FRA is 66 will have a 25% reduction at age 62. Our single person could also delay payments until after FRA, in which case benefits are increased by 2/3 of 1% for each month of delay or 8% per year. There is no increase for a delay after age 70. Thus, our single person could collect as much as 32% more than his or her PIA (plus the annual COLAs) at age 70.

Social Security election strategies are relatively simple for our single person. A delay in collecting benefits can provide greater monthly income in the future and may be desirable if current income needs can be satisfied elsewhere – such as continuing work income or other resources. Personal health and expected longevity must also be considered. If our single person is healthy with a long expected lifespan, a delay in Social Security benefits is a good option. If life expectancy is not so long, then it is advantageous to take benefits earlier.

Of course, the hypothetical single person with no current or former spouse and no children or other dependents does not frequently exist. Most of us are or were married or may have children or other dependents. The Social Security system provides benefits for spouses, dependent children, and disabled persons.

This article is not intended to be a treatise on the full scope of Social Security benefits. That is a broad and complex subject. Quite a bit of information is available at the Social Security Administration official website at www.ssa.gov. You can create your own account on the official website to review your earnings record and to explore benefit alternatives. This article will focus on a few strategies that can be used by married couples to try to maximize benefits. Some of these strategies are being eliminated as a result of a statutory change that will become effective May 1, 2016. Because of this change, some individuals may be prompted to take action now to preserve a favorable option. To be sure, there is no sure-fire benefit option that can be determined for any individual. The major unknown is our lifespan. Choices can best be made with a realistic guess about longevity and an honest assessment of other personal resources such as work income, savings and other financial resources for retirement security.

Options for Married Couples

Benefit options for married couples can be complex, confusing, and are not always well-presented by the Social Security system. Much of the complexity is because a married person can collect benefits based on his or her own earnings record and is entitled to spousal benefits based on the earnings record of a spouse. There are separate rules about when the spousal benefits may be claimed. Here are some basic ground rules:

1. One spouse may claim spousal benefits only after the other spouse claims primary benefits.
2. A worker's PIA at FRA determines the spousal benefit.
3. At FRA, one spouse may apply for benefits and immediately "suspend" those benefits. This allows the other spouse to claim spousal benefits. The spouse who has "filed and suspended" may delay receipt of the PIA until age 70, allowing the 32% increase to apply. This is the "file and suspend" strategy that is being eliminated on May 1, 2016.
4. At FRA, one spouse may file a "restricted application" that is limited to a claim for spousal benefits. This restricted application may later be abandoned at age 70 to claim the spouse's own PIA, along with the 32% increase for the delay in primary benefits. This option, a "restricted application," is also being eliminated by the new law. Under the new provisions, when an applicant applies for a benefit, the Social Security Administration will automatically give the applicant the highest benefit available – either the primary benefit or the spousal benefit – meaning that an applicant will not be able to delay (and increase) a higher primary benefit while collecting a lower spousal benefit. A restricted application will be available to an individual who was at least age 62 by the end of 2015, and then only if his or her spouse has filed and suspended (or has claimed benefits) by the end of April, 2016.

Here is a summary of the principal options available to married couples:

1. Each spouse files for benefits at the desired age – age 62 up to age 70.
2. "File and suspend" – where one spouse files for primary benefits and suspends receipt (in order the earn the delayed benefit increase), and the other spouse files for benefits.
3. "File and restrict" – where one spouse files for primary benefits and the other spouse files a restricted application for spousal benefits only (thus allowing that spouse's primary benefit to earn delayed credits up to age 70).
4. "File and suspend" and "file and restrict" – one spouse files for primary benefits and suspends receipt (allowing the PIA to earn delayed credits); the other spouse files a restricted application for spousal benefits (also allowing that spouse's PIA to earn delayed credits.

The first option above is simple, but it likely does not leverage the spousal benefit rules to the couple's best advantage.

"File and Suspend" Tactic

In order to "file and suspend," the filing spouse must have reached FRA – age 66 for most currently eligible recipients. This strategy is best suited for the suspending spouse who has a higher earnings history than the other spouse. Using this "file and suspend" strategy, the lower-earning spouse files for and begins to receive benefits that include the spousal benefit derived from the higher-earning spouse's earnings history. After the end of April, 2016, spouses of covered workers who "file and suspend" will no longer be permitted to claim a spousal benefit as long as the spouse's benefit is suspended.

Further notes to the "file and suspend" strategy:

- Under current law, a claimant who has suspended his or her benefit may undo the suspension later, claim a lump sum of retroactive benefits (foregoing the delayed commencement credits) and continue future monthly benefits. This retroactive option is useful if a person who has suspended benefits later discovers a serious health problem affecting longevity. A new rule has eliminated this ability to collect retroactive benefits for anyone who files and suspends after May 1, 2016.
- By filing and suspending, a claimant is automatically covered under Medicare Part A. Part A, covering hospital expenses, requires no premium and is separate from the other Medicare programs covering doctor expenses and drugs. Once an individual is covered under any part of Medicare, deductions for contributions to Health Savings Accounts ("HSAs") are eliminated.

"File and Restrict" Tactic

The "file and restrict" strategy is also being essentially eliminated by the new rules. Under current law, if a claimant files for benefits, the claimant is "deemed" to take the highest benefit available – either the primary or spousal benefit. At FRA, however, a claimant may restrict an application to spousal benefits only. By using this strategy, a higher-earning spouse at FRA can restrict the Social Security application to the spousal benefit and allow the primary benefit to earn delayed credits. Then, at age 70, the primary benefit is claimed. The new law ends this strategy by extending the "deeming" rule to all Social Security applicants – whether at FRA or earlier. Thus, the new rule will no longer permit a higher-earning spouse to restrict the benefit claim at FRA to the spousal benefit. The choice to the higher-earning spouse under the new law will be to either start the PIA at FRA or to delay. Under the amended rules, only persons age 62 or older by the end of 2015 will be allowed at FRA to file a restricted spousal benefit claim based on a benefit filing (including a "filed and suspended" benefit) made by the end of April, 2016.

Where To Go From Here

Under Social Security, spousal benefits, as well as survivor benefits to surviving spouses will continue to exist. Some of the strategies to maximize benefits will change, and the whole system remains complex for married couples.

The purpose of this article is not to lead anyone to a specific decision about how to maximize your benefit options under Social Security. Coming up with the best choice for any individuals requires first knowing the specifics of each person's earnings history and a good estimate of the primary insurance amount. As noted, this basic information can be obtained and reviewed by each individual at the Social Security Administration website, www.ssa.gov. By setting up your account at the Social Security Administration website, you can get valuable information about your individual benefit.

Spousal strategies to maximize benefits start with knowing each spouse's PIA. The other important facts, however, are realistic estimates of longevity as well as a review and estimate of overall income and resources available during retirement. As a result of unknown or unaccounted-for factors, it could be that the best-laid plans to maximize Social Security benefits turn out to be wrong. While this is true, a good deal of peace of mind can be achieved by thoughtful planning. Choosing how to take Social Security benefits ought to be accompanied by careful thinking about your health and other retirement resources – private pensions and annuities, IRAs, and accumulations in 401(k) or 403(b) plans, after-tax savings and investments, life insurance and other resources. Personal attention to these matters, especially if the law changes are affecting your options, is recommended. There are private resources that have developed modeling programs to put specific numbers to your personal options. These can be helpful. Consulting an unbiased expert and legal counsel in estate planning is also recommended. Careful planning before decisions are made provides most people with better feelings about their decisions and confidence in facing the future.

If you have any questions about this memorandum, please contact any member of our Employee Benefits and Executive Compensation Practice Group listed below.

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