Social Security Administration
Office of Legislation and Congressional Affairs

Bipartisan Budget Act of 2015 Closes Social Security Loophole

Overview

Prior to the recently enacted *Bipartisan Budget Act of 2015* (BBA), unintentional Social Security loopholes were in place that allowed couples with financial means to obtain additional or enhanced benefits that Congress did not intend, and are contrary to the goals of the Social Security program. The loopholes could harm the program's finances by undermining the formulas that ensure Social Security beneficiaries receive roughly the same amount of lifetime benefits regardless of when they start to claim them. These loopholes are often described as "aggressive claiming strategies" because they involve higher-income individuals who follow a deliberate claiming pattern — often under the advice of financial planners — to exploit benefits in a manner that is not the norm (or an option) for most middle class workers.

The BBA closes these loopholes *prospectively* so that new claimants cannot use them.

The Loopholes

- **Claim then Suspend:** This practice allowed a worker to file for benefits but then suspend payments, while still allowing a benefit to be paid to the spouse, even though the worker had not retired and was not collecting benefits. This undermined the purpose of spousal benefits, which is to supplement benefits paid to the worker when there are dependent family members. A worker who chooses to delay receipt of retirement benefits beyond the full retirement age, currently 66, accumulates "delayed retirement credits" (DRCs) which lead to a higher benefit when they do retire. The formula for calculating DRCs for workers who delay retirement is designed to be "actuarially fair" – meaning the worker would be expected to receive the same amount of benefits over their lifetime as they would if they did not delay retirement – and assumes that *no spousal benefits are being provided* when the worker is not receiving benefits. The loophole subverted that actuarial fairness, giving those who use this claiming strategy more in benefits than was intended. The provision to close this loophole takes effect April 30, 2016. After that, if a worker suspends his or her retirement benefit, then spousal benefits based on that person's earnings will also be suspended. Furthermore, a worker who suspends after April 30 will no longer be able to retroactively "un-suspend" benefits at a later point and receive a lump sum for the past-due period.

- **Spouse then Worker:** This practice allowed a worker with relatively high earnings to collect a spouse benefit for several years while they accrued DRCs on their own wage record until age 70 (raising their benefit by as much as 32 percent), when they switched from a spousal benefit to a worker benefit. This also subverted the intention of spousal benefits, intended for spouses with lower or no earnings, and the actuarial fairness of the DRC formula. This strategy is no longer available to anyone who was not already age 62 (or over) prior to January 2, 2016. Anyone who was at least 62 in 2015 can still file a "restricted claim" for spousal benefits after reaching full retirement age (currently age 66) and wait to file for his or her own retirement benefits later (while earning DRCs) – i.e., they were "grandfathered in." Prior law had already disallowed restricted claiming for those between age 62 and full retirement age.

The Problem with Aggressive Claiming

Social Security benefits were designed to replace income that is lost when a wage-earner retires, becomes disabled, or dies. To achieve income adequacy goals for lower and middle class workers, Congressional intent was that spouse benefits would *supplement* retirement income for retired couples with one primary earner—not provide a "bonus" benefit that high-income couples could manipulate to their financial advantage. Moreover, benefits were always intended to be "actuarially fair," regardless of when claimed (i.e., between age 62 and age 70); yet individuals who used aggressive strategies to claim a lower spousal benefit while simultaneously earning DRCs added program costs that were never envisioned.

Incidence of Aggressive Claiming

Because aggressive claiming strategies were borne of successive legislative changes that occurred over decades, the public had only become aware of these strategies in recent years. Thus, while a relatively small number of individuals currently use aggressive claiming, these numbers were expected to grow as more baby-boomers retired and became aware of these tactics. As of December 2014, less than 0.2% of Old-Age and Survivors Insurance beneficiaries were using these aggressive claiming strategies.

Closing the Loopholes: The Bipartisan Budget Act of 2015

Section 831 of the BBA eliminates these aggressive claiming loopholes by 1) extending "deemed" filing (eliminating the ability to file for only a worker or only a spouse benefit) to all retirement and spouse applicants, not just those below the full retirement age; and 2) changing the suspension policy so that other benefits payable on the worker's record, such as a spousal benefit, are also suspended. Widowed spouse benefits are not affected by the former policy, and divorced spouse benefits are not affected by the latter. Both policies will be implemented on a prospective basis only.

History of Social Security Program Rules Affecting Loopholes

These policy changes – specifically the limit on deeming to people below the full retirement age, the ability to suspend benefits to earn DRCs, and the elimination of the Retirement Earnings Test (RET) at the full retirement age – allowed the loopholes that led to the use of aggressive claiming strategies to increase benefits in a way that is contrary to the intent of Congress.

Spousal benefits (1939): Spouses can receive 50 percent of the primary worker's benefit. However, if the spouse is also eligible for a benefit on his or her own work record, the spouse receives only the higher of the two benefits – not both.

Early Retirement (1956 (women) and 1961 (men)): Workers may start benefits at age 62, but benefits are reduced to be "actuarially fair," i.e., the total amount of lifetime benefits is expected to be the same regardless of when claimed between age 62 and the full retirement age.

Deemed Filing (1956 (women) and 1961 (men)): To prevent gaming, individuals who claim benefits before the full retirement age must file for any other benefit to which he or she may be eligible. This provision prevents individuals from claiming a reduced worker benefit at age 62 and later claiming an unreduced spouse benefit at the full retirement age. (Deemed filing did not apply to workers at the full retirement age or older in 1956 because there were no DRCs, and thus no advantage to be gained by filing later than the full retirement age.)

Delayed Retirement Credits, or DRCs (1972): DRCs boost benefits by roughly 8 percent a year between the full retirement age and age 70. For example, a worker may be eligible for $1,000 a month benefit at full retirement, but if the worker delays benefits until age 70, DRCs increase the benefit to $1,320 a month. The increase in benefits is designed to be actuarially fair over a lifetime.

Senior Citizens' Freedom to Work Act (2000): Eliminated the RET for workers above the full retirement age, and allowed beneficiaries to suspend benefits between the full retirement age and age 70 to earn DRCs. Previously, if a beneficiary past full retirement age had substantial earnings, a significant portion of their benefits were withheld.