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Social Security's Filing Rules: Changes Enacted in 2015

Overview

The Bipartisan Budget Act of 2015 (BBA 2015; P.L. 114-74, signed November 2, 2015) contained a number of Social Security-related provisions, including changes to certain rules that apply when a person files an application for Social Security benefits. Specifically, Section 831 of the BBA 2015 made changes to two types of filing rules: (1) *deemed filing* and (2) the *voluntary suspension of benefits*. In both cases, the changes affect options available to claimants who are *full retirement age or older* (the full retirement age ranges from 65 to 67, depending on the person's year of birth).

The changes in Social Security's filing rules were intended to prevent the use of "claiming strategies" viewed as inconsistent with the concept behind Social Security spousal benefits and that otherwise allowed workers and spouses to collect more in Social Security benefits than Congress intended. The claiming strategies addressed in the BBA 2015 were not based on practices explicitly approved by Congress. Rather, they stemmed from interactions between filing rules in place and various legislative changes to the program over time.

Deemed Filing

A worker who qualifies for both a retired-worker benefit and a spousal benefit generally cannot restrict his or her application to only one type of benefit. Rather, when the person files for one type of benefit, he or she is required (or deemed) to file for the other type of benefit at the same time. The person becomes simultaneously entitled to a retired-worker benefit and a spousal benefit, and the spousal benefit is subject to reduction under the dual entitlement rule. Under the dual entitlement rule, a person receives his or her own retired-worker benefit first, plus a spousal benefit that has been reduced by the amount of the retired-worker benefit. Depending on the circumstances, the spousal benefit may be reduced to zero. In effect, the person receives the higher of the two benefit amounts (not both).

Deemed filing applies to retired-worker benefits and spousal benefits (including divorced spouse's benefits), with some exceptions. Deemed filing does not apply if a person receives spousal benefits and is also entitled to disability, or if a person receives spousal benefits because he or she is caring for the worker's eligible child (a child who is under the age of 16 or disabled). In addition, it does not apply to widow(er)'s benefits.

Before the BBA 2015, deemed filing applied only to claimants who are *below the full retirement age*. A claimant who was *full retirement age or older* could file a *restricted application* for benefits; that is, he or she could file an application for spousal benefits only, for example, and wait until a later time to file for retired-worker benefits. This would allow the person to receive a full spousal benefit now (the dual entitlement rule would not be applied at this time) and to file for a higher retired-worker benefit later. (Retired-worker benefits are increased 8% per year from full retirement age up to age 70 based on delayed retirement credits.) Some beneficiaries used this claiming strategy as a way to maximize their Social Security retired-worker and spousal benefits.

The BBA 2015 eliminated the restricted application option for claimants who are full retirement age or older. Like claimants who are below the full retirement age, they are deemed to file for both a retired-worker benefit and a spousal benefit, if eligible for both.

The deemed filing change is effective for people born in 1954 or later (i.e., people who reach age 62—the age at which one first becomes eligible for retirement benefits—on or after January 2, 2016). People born before 1954 (people who reached age 62 and first became eligible for retirement benefits before January 2, 2016) are grandfathered under the old rules. They can file a restricted application for spousal benefits only or retired-worker benefits only *when they reach full retirement age*. If they claim benefits before full retirement age, they are subject to deemed filing rules.

Voluntary Suspension of Benefits

Social Security benefits replace a portion of earnings lost due to the worker's retirement, disability, or death. Therefore, family members generally cannot claim benefits on a worker's record if the worker has not claimed benefits. Before the BBA 2015, a worker who was full retirement age or older could file an application for retired-worker benefits and then request that the benefit payments be suspended. This *file and suspend* approach (1) allowed the worker to accrue delayed retirement credits during the period of suspension (i.e., his or her benefit would increase 8% per year from full retirement age up to age 70), and, at the same time, (2) allowed eligible family members (such as a spouse or dependent child) to claim benefits on the worker's record.

In addition, a beneficiary who had voluntarily suspended his or her own retired-worker benefit could receive a spousal or widow(er)'s benefit based on another person's record. A spousal or widow(er)'s benefit would be reduced under the dual entitlement rule as if the beneficiary's own retired-worker benefit had not been suspended (i.e., the beneficiary could receive any *excess* spousal or widow(er)'s benefits). Also, a worker could "unsuspend" his or her benefits on a *retroactive basis* and receive a lump sum payment for the past-due period.

Under the BBA 2015, a worker who is full retirement age or older can file for retired-worker benefits and voluntarily suspend benefits between the full retirement age and age 70 to earn delayed retirement credits (as before). This approach could be used by a beneficiary who claims retired-worker benefits and then returns to work, for example. Under the new rules, benefits are no longer payable to eligible family members based on the worker's record during the period of suspension, with the exception of *divorced spouses*. A divorced spouse may collect benefits on the worker's record during the period of suspension. Widow(er)'s benefits are also payable on the record of a deceased worker who had suspended his or her own retired-worker benefits.

In addition, a worker can no longer receive benefits based on another person's record while his or her own retired-worker benefit is suspended; nor can a worker "unsuspend" his or her benefits retroactively and receive a lump sum payment. The period of benefit suspension ends with the earlier of (1) the month before the individual turns age 70, or (2) the month following the individual's request to have benefit payments resume.

The changes apply to requests for the voluntary suspension of benefits made after April 29, 2016. (Social Security Administration (SSA), Program Operations Manual System, *EM-16007: Processing of Voluntary Suspension Requests*.)

Rationale for Changes

Changes in Social Security's filing rules enacted as part of the BBA 2015 were intended to address claiming strategies viewed as inconsistent with the concept behind spousal benefits. Benefits for spouses (as well as children and certain other family members) were created by Congress in 1939 to supplement the benefits paid to workers who have dependent family members. Benefits were established for spouses who are dependent on the worker for economic support because they have little or no earnings history of their own. Since 1939, the dual entitlement rule has been used to gauge a spouse's dependence on the worker. It was also established as a way to address concerns at the time about the cost of creating a new category of benefits payable to spouses.

Before enactment of the BBA 2015, the rules allowed a person who was at least full retirement age to apply for a spousal benefit *only*, when he or she also qualified for a retired-worker benefit. The person could receive *full* spousal benefits for several years with no reduction because the dual entitlement rule would not apply. The restricted application and file and suspend options were also being used in combination by some married couples, for example, to allow both members of the couple to maximize their own retired-worker benefits (through the accrual of delayed retirement credits), and to allow one member of the couple to receive *full* spousal benefits at the same time.

Allowing a worker to accrue delayed retirement credits while spousal benefits are being paid on his or her record created a further inconsistency. As SSA explains, delayed retirement credits are calculated to be "actuarially fair"—that is, to provide the worker with the same amount of benefits over their lifetime as if they had not delayed retirement (based on average life expectancy). The formula for calculating the credits assumes that no spousal benefits are being paid when the worker is not receiving benefits. As a result, the file and suspend rules allowed those who used this option to collect more in benefits than was intended. (SSA, *Bipartisan Budget Act of 2015 Closes Social Security Loophole*, April 2016.)

Use of Claiming Strategies

To use the restricted application and file and suspend options that were available before enactment of the BBA 2015, a person had to be full retirement age or older. A majority of beneficiaries claim benefits before they reach full retirement age; therefore, most claimants will not be affected by the changes in Social Security's filing rules. In 2014, for example, 60% of new retired-worker beneficiaries claimed benefits before full retirement age.

According to SSA, a relatively small number of beneficiaries were using the claiming strategies in place before the BBA 2015 (less than 0.2% of Old-Age and Survivors Insurance beneficiaries as of December 2014, or less than 100,000 beneficiaries). SSA points out, however, that the public had become aware of these claiming strategies only in recent years, and that the number of people taking advantage of them was expected to increase. The most recent legislative change related to these claiming strategies was in the Senior Citizens' Freedom to Work Act of 2000 (P.L. 106-182). The act eliminated the Retirement Earnings Test for beneficiaries who are full retirement age or older (i.e., these beneficiaries can have any amount of earnings without triggering a withholding of their benefits), and it allowed beneficiaries to voluntarily suspend their benefits between the full retirement age and age 70 to earn delayed retirement credits. (SSA, *Bipartisan Budget Act of 2015 Closes Social Security Loophole*, April 2016.)

The Social Security Board of Trustees estimates that the changes in Social Security's filing rules under the BBA 2015 will result in a small amount of program savings.

Additional SSA Resources at *www.ssa.gov*:

- Recent Social Security Claiming Changes
- Deemed Filing FAQs
- Voluntary Suspension FAQs

For an overview of the Social Security program, see CRS Report R42035, *Social Security Primer*.

(This product was written by CRS analyst Dawn Nuschler. Congressional clients may contact the current author regarding any questions.)

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