

What Divorcees Should Know About New Social Security Rules



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The U.S. divorce rate dropped for the third consecutive year, reaching its lowest point in nearly 40 years according to BGSU National Center for Family and Marriage Research. Interestingly, in contrast, the divorce rate among couples 50 and older is growing rapidly. Today, 25% of the couples getting divorced in America are over the age of 50.

Understanding Social Security (SSA) retirement and survivor benefit options for spouses and ex-spouses is an important part of any divorce negotiation and settlement agreement. In 2017, the maximum Social Security benefit depends on when one files. Those who file at the earliest possible age of 62 can receive a maximum of \$2,153 per month. At age 70, the maximum amount is \$3,538 per month. In 2015, Congress enacted the Bipartisan Budget Act of 2015, which closed some unintentional loopholes in Social Security called aggressive claiming strategies.

Here are the current rules for divorced spouses and surviving divorced spouses of a deceased worker.

Your Own Social Security Benefits as a Retired Worker:

- Begin as early as age 62
- Normal or Full Retirement Age (NRA) is age 66, gradually increasing to 67 based on birth year
- Maximum benefits at age 70
- Benefits accrue at 8% each year you delay NRA until age 70
- Benefits end when you die.

Ex-Spousal Benefits of Retired Worker:

First, the requirements:

- Only eligible if marriage lasted at least 10 years
- You are unmarried at the time of application for benefits
- You are age 62 or older.

If you qualify, here's what you need to know:

- Your ex-spouse is entitled to Social Security retirement or disability benefits.
- If your ex-spouse has not yet applied for retirement benefits but can qualify for them, you can receive benefits based on their record if you have been divorced for at least two years.
- You are entitled to receive whichever benefit is higher, your own or 50% of your ex-spouse's benefits if you start receiving at NRA; you do not receive any delayed credits your ex-spouse may receive.
- You are limited in the amount if you continue to work while receiving benefits.
- Also limited if you receive a pension based on work not covered by Social Security, such as government work.
- Benefits end when you die or remarry.
- If your remarriage ends in annulment, divorce or death, then you can collect on a former spouse's record if you qualify.
- The amount you receive as a divorced spouse has no effect on the amount of the benefits your ex-spouse or his or her current spouse may receive.
- If your ex-spouse had numerous marriages, any of his or her ex-spouses who had been married at least 10 years is entitled to receive benefits based your former spouse's record. This does not affect the former spouse's benefits.

Surviving Divorced Spouse's Benefits of Deceased Worker:

- You receive same benefits as a widower provided your marriage lasted 10 years or more.
- If taking care of a child younger than 16 or disabled, there is no age or length of marriage requirement.
- If you remarry after you reach age 60, the remarriage will not affect your eligibility for survivor benefits.
- There is a one-time death payment of \$255 and you must apply within two years of the death.
- Benefits begin at age 60 (reduced benefits, or at age 50 if disabled).
- You can apply for reduced survivor benefits at age 60 and switch to your own maximum retirement benefits at full retirement age or later, OR
- Begin at full retirement age for 100% of survivor's full benefits.
- Survivor benefits do not qualify for delayed retirement credit.
- You cannot apply online for survivor's benefits.
- Benefits end when you die.
- If your second spouse dies, you cannot receive benefits from two deceased former spouses at the same time. SSA will compare the records of your previous husband with those of your second husband so that you can claim the record that provides the greatest benefit.

Application for Benefits:

The information the Social Security Administration needs is:

- Proof of death—either from a funeral home or death certificate
- Your Social Security number (SSN), and the deceased worker's SSN
- Your birth certificate
- Your marriage certificate, if you're a widow or widower
- Your divorce papers, if you're applying as a divorced widow or widower
- Dependent children's Social Security numbers, if available, and birth certificates
- Deceased worker's W-2 forms or federal self-employment tax return for the most recent year, and
- The name of your bank and your account number so your benefits can be deposited directly into your account.

The impact of the new rules for divorced people is very similar to those who are married.

- You will no longer be able to receive benefits on anybody else's work record while your benefits are suspended (eliminating file and suspend).
- No option to file restricted application if you were born after Jan. 2, 1954 (cannot restrict your own benefit at NRA to equal "spousal amount" and then delay start of own benefit at age 70). You are stuck with the original benefit application amount.
- Spousal benefits max out at NRA (unlike your own at 70).

It is very important for family law advocates to work with their clients and/or a financial advisor regarding these changes, as this can have a significant impact on the cash flow one's client will have available, and when they plan their filing dates. These changes will significantly impact how spouses in a divorce negotiate for spousal support and how they will anticipate and negotiate future income from Social Security benefits.

The parties will have to negotiate trade-offs in Social Security claiming strategies. These trade-offs will have to be compensated for with other assets of the marital estate, as they have associated costs to each party. The terms of each party's full retirement age and the time for collecting Social Security benefits should be specified in the judgment of divorce. Enforcement of these terms will be similar to the enforcement of all other terms of the judgment.



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