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DIVORCED? YOU COULD BE ENTITLED TO MUCH MORE SOCIAL SECURITY

Breaking up is hard to do—but on the bright side, it may provide some extra retirement benefits.

The Social Security system has special rules and options for people who have divorced—rules that allow some to claim significantly larger benefits than they otherwise would receive.

But don't expect the Social Security Administration (SSA) to inform you that you're eligible for those higher benefits. It's up to a divorced person to inform the SSA of a past marriage and to request benefits based on his/her former spouse's earnings history (800-772-1213, www.ssa.gov). Otherwise, you may be leaving thousands of dollars on the table, particularly if your former spouse earned significantly more than you did.

Here's what you need to know about Social Security benefits if you have divorced...currently are going through a divorce...or are considering divorce now...

IF YOU WERE THE LOWER EARNER

If your marriage lasted at least 10 years and you have not remarried, you likely will be eligible to claim Social Security benefits based on your former spouse's earnings history—assuming that those benefits exceed the benefits that you would receive based on your own earnings. Unlike a current spouse, who must wait for the wage earner to file

for benefits before claiming spousal benefits, an ex need not wait unless the marriage ended within the past two years. Inform the SSA that you wish to file as an "independently entitled divorced spouse." There is no downside to doing this—it will have no effect on your ex's benefits, and if it turns out that your own benefits exceed those available to you through your ex's earnings, you simply will receive your own benefits instead.

Your benefits as a divorced spouse likely will be very similar to those that would have been available to you had you remained married, and like a married person, you must opt for either benefits based on your own earnings or benefits based on the earnings of the current or former spouse. You can't claim both at the same time.

What you will be eligible for...

■ **While your ex is alive, you will be eligible for a monthly "spousal benefit"** equal to 50% of this former spouse's full retirement benefit, starting at your full retirement age. You could begin these benefits as early as age 62, but doing so would permanently reduce your monthly checks by as much as one-third. For larger monthly checks, wait until full retirement age.

The cochairs of a bipartisan deficit commission proposed capping spousal benefits at 50% of the average wage earner's benefit, which would

reduce the monthly benefits of some spouses and ex-spouses of high earners. Even if such a rule is ever adopted, however, it likely would exempt those already in or near retirement.

■ **After your ex passes away, you will be eligible for monthly "survivors benefits"** equal to 100% of the monthly amount that your former partner was entitled to receive, instead of the 50% spousal benefit. Survivors benefits can be started as early as age 60—age 50 if you are disabled—but your checks will be permanently reduced if you start receiving them before your full retirement age. Divorced former spouses are not eligible for the special lump-sum death benefit paid to surviving spouses.

Even though you cannot simultaneously receive Social Security benefits based on your own earnings history and benefits based on your ex's earnings, you can switch between these if future Social Security reforms or life events affect the amount that you would receive.

Example: A divorced woman claims benefits based on her own earnings, which are greater than the 50% spousal benefits she would receive based on her ex-husband's earnings. When her ex passes away, she switches because the 100% survivors benefits she would receive based on his earnings exceed her own benefits.

Bottom Line/Personal interviewed Barbara Shapiro, CFP, a certified divorce financial analyst (CDFA) and vice president of HMS Financial Group, a financial-planning, wealth-management and investment firm based in Dedham, Massachusetts. For 17 years, Shapiro has counseled clients on financial planning during and following divorce. She is regional director of the Institute for Divorce Financial Analysts, a certification and education organization based in Southfield, Michigan. www.BShapiro-cdfa.com

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IF YOU REMARRY

You likely will lose your right to benefits based on your ex's earnings history if you remarry. *Two exceptions...*

■ **If this new marriage also ends**—whether due to divorce, annulment or your new spouse's death—you once again will become eligible for benefits under your first ex's earnings history, regardless of how long the second marriage lasted. If you also are eligible for benefits based on the second partner's earnings—you are likely to be eligible if this marriage lasted at least 10 years, or if it ended because of the death of this second partner—you will be allowed to choose whichever partner's earnings history is more beneficial to you.

■ **Remarriage will not prevent you from claiming survivors benefits based on your ex's earnings** if the new marriage occurs after your 60th birthday—after your 50th birthday if you are legally disabled. This is true whether your ex dies before or after you turn 60 and remarry. If you are nearing 60 and considering remarriage, it could be worth delaying the wedding.

IF THERE ARE MINOR CHILDREN

If you are caring for your ex's natural or legally adopted child... this child is younger than 16 and/or legally disabled ...and your ex passes away, you might be eligible for benefits of up to 75% of the ex's full retirement benefit as a surviving divorced parent. These parental benefits are different from the 100% survivors benefits mentioned above that could be available to you when you reach retirement age and are available even if you have not yet reached retirement age and even if your marriage did not last 10 years.

They end when the child turns 16 unless the child is disabled. The child also is entitled to benefits based on the deceased parent's earnings, typically up to age 18, or 19 if he/she is attending high school full-time.

Note: All of the minor children and caregiving parents combined cannot receive more than 150% to 180% of the deceased wage earner's benefit. If there are numerous claimants and this cap is reached, each claimant will receive a reduced benefit.

Example: When a husband passes away, his ex-wife is caring for his 14-year-old son while his new wife is caring for his four-year-old daughter. Because there are four total claimants—two wives and two children—each is likely to receive between 37.5% and 45% of the husband's full benefit amount, rather than the 75% each would have received had the ex-wife and oldest child not filed for these benefits.

IF YOU ARE THE HIGHER EARNER

If you earned more than your former spouse during your career, filing as an "independently entitled divorced spouse" will not increase your benefits. On the bright side, as discussed above, your ex's right to claim spousal and survivors benefits based on your earnings will not reduce your Social Security benefits or the benefits available to your current spouse except, perhaps, if you pass away while your ex is caring for your minor or disabled children, as described earlier.

Your ex's Social Security benefits could become an issue for you if your ex requests a modification to your alimony agreement after age 62, however. You and your attorney or a financial professional should

take a close look at the ex's use of the Social Security system. An alimony increase is less likely to be granted if you can establish that your ex could boost his/her income by maximizing Social Security benefits instead.

Example: A 66-year-old woman took her ex to court to request an increase in alimony until age 70, stating that she wished to delay the start of her Social Security spousal benefits until then. Her ex-husband's advisers successfully countered that there was no good reason for this woman not to start her Social Security spousal benefits immediately. Unlike the benefits available to wage earners, spousal benefits do not increase by waiting beyond full retirement age.

IF YOU ARE CURRENTLY DIVORCING

The right of one former spouse to claim Social Security benefits based on the other's earnings does not need to be negotiated during divorce proceedings. These benefits are legal entitlements, not a negotiable component of the marital assets. Do consider the precise length of the marriage before the divorce is finalized, however. If it ends even one day short of 10 years, you will not be entitled to potentially valuable Social Security benefits based on your former partner's earnings. Reaching the 10-year mark is particularly important for spouses who have limited earnings histories of their own. If the marriage appears on course to end just shy of the 10-year mark, ask your divorce lawyer if the process could be dragged out slightly, or ask your spouse to agree to a brief postponement. The date the divorce is finalized is what matters, not the date of legal separation. ■ ■