

## **PART THREE**

### **A GUIDE TO SPECIFIC RETIREMENT SYSTEMS:**

#### **WHAT ARE YOUR RIGHTS?**

*Part Three* describes the largest retirement systems and explains how the rules of each affect pension rights at divorce. Each chapter tells you what benefits are available from a specific retirement system and how to claim them.

#### **CHAPTER 1**

##### **SOCIAL SECURITY**

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##### **SOCIAL SECURITY**

#### **How Social Security Works**

**T**he social security retirement system covers workers in private companies and nonprofit organizations. Members of the military, and civilian employees of the federal government hired

in 1984 and after.<sup>1</sup> It also covers 70 percent of state and local government employees, some employees of religious organizations, and people who are self-employed. It is run by the Social Security Administration, a federal agency.

Both employers and employees are required to pay into social security. A worker born after 1928 needs to have at least 10 years of work under social security in order to earn benefits at retirement. Fewer years of work are needed for workers born before 1929. The monthly benefit a worker receives is based on the number of years worked and the worker's average earnings, but not on how much money was paid in.

A worker born before 1938 may start collecting a basic security retirement benefit at age 65, or a reduced benefit as early as age 62. (The retirement age for a worker born in 1938 or later depends on the worker's year of birth and ranges up to age 67.)

A worker who qualifies for social security disability may start collecting the unreduced basic social security benefit at any age.

Everyone who receives social security benefits, including family members, gets yearly cost of living increases.

## **Social Security Benefits for Divorced Wives**

You may be eligible for social security benefits based on your ex-husband's work if you meet certain requirements and make an application for benefits through a social security office. (*See "Getting Information,"* page 45.) No court order is necessary. Benefits can be paid both while your ex-husband is living and after he dies. (Note that the Social Security Administration uses the word "wife" to refer to a woman whose husband is living, and "widow" or "mother" to refer to someone whose husband has died or to a widow with children.)

Even though an employee's social security benefits are not divisible as marital property at divorce, your lawyer should still ask your husband to provide a copy of his personal benefits statement from the Social Security Administration that will estimate his future benefits. If he didn't get one automatically in the mail from Social Security, then he can request one by telephone or online (see page 45 - *Getting Information*). His benefit statement will give you an idea of how much you might be able to collect as a former wife, which will assist you in your divorce negotiations and retirement planning.

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**IMPORTANT:** If you are counting on receiving both pension benefits and a large social security benefit from your husband's work, you need to know that social security "offsets" can cancel out some or all of the social security benefits you may expect to receive. (*See "Offsets,"* page 39) Don't give up the right to other property or financial settlements at divorce until you know whether your social security benefits may be affected.

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<sup>1</sup> Federal government employees hired before 1984 were given the chance to transfer to a new retirement system that included social security coverage for future years of work.

## **Your Rights While Your Ex-husband Is Living**

A former wife who was married at least 10 years may be eligible for a social security benefit based on her ex-husband's earnings even if his social security credits were not earned during the marriage. This divorced wife benefit is not taken out of the ex-husband's social security check, but is a separate benefit equal to no more than half of his basic benefit. (It is the same amount as a wife's benefit.) You may start collecting the benefit as early as age 62, but it will be reduced - up to 25 percent - if you start collecting before age 65.<sup>1</sup> For example, if you could collect \$200 a month starting at 65, you could instead choose to collect \$150 a month starting at 62.

In order to receive a divorced wife benefit

- You must be at least 62 years old, *and*
- You must not have remarried since your divorce, *and*
- The marriage must have lasted at least 10 years, *and*
- Your former husband must have begun collecting his own retirement or disability benefits,

*OR*

If he is not yet collecting, he must be at least age 62 and have worked long enough to earn the right to receive social security retirement benefits, and you must have been divorced at least two years.

The divorced wife benefit can be paid for as long as your ex-husband lives, although certain events can cause your benefits to stop sooner. (*See "Factors That Can Affect Your Benefits," page 38.*)

Social security does not pay a disability benefit to a divorced wife who is or becomes disabled (but does pay a benefit to a divorced disabled *widow*).

*Note:* Courts occasionally consider the *ex-husband's* social security benefit as part of the marital property or as a resource on which to base an award of alimony or child support. A court might do this even if you were not married 10 years.

## **Your Rights After Your Ex-husband Dies**

After your ex-husband dies, you may be eligible for one of three survivor benefits.

- A *divorced widow benefit* is payable if you were married at least 10 years and are at least age 60.
- A *disabled divorced widow benefit* is payable if you were married at least 10 years and are at least age 50 and severely disabled.

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<sup>1</sup> If you were born after 1937, the maximum reduction may be as much as 35 percent, depending on the year you were born.

- A *surviving divorced mother benefit* is payable regardless of the length of your marriage or how young you are, as long as you have in your care the worker's child who is under age 16 or disabled and is collecting a social security benefit.

The first two benefits, the divorced widow and disabled divorced widow benefits, are equal to 100 percent of the benefit your former husband was collecting (or would have collected, if he dies before retirement). Your benefit will be reduced if you start collecting it before age 65. For example, a maximum reduction of 28 1/2 percent applies if you start collecting at age 60 or earlier.

A surviving divorced mother benefit is equal to 75% of your ex-husband's age-65 benefit. Your age does not affect the amount you receive.

### **Don't Delay in Applying**

Even if you have lost track of your ex-husband and don't know whether he has retired or died (or you don't know his social security number), you should apply for benefits if you think you might be eligible. The Social Security Administration can help you obtain the necessary information.

### **Factors That Can Affect Your Benefits**

You may lose all or part of your expected benefits if you work after retirement, or collect more than one benefit

### **Remarriage**

*If you remarry*, your divorced spouse benefits may well be affected.

- *Divorced Wife*. This benefit stops if you remarry at any age. It can be restored, however, if your new marriage ends.
- *Surviving Divorced Mother*. This benefit stops if you remarry at any age, but can be restored if your new marriage ends and you still have an eligible child in your care. But even if this benefit stops, you may eventually become eligible for a divorced widow benefit once you meet the age and other requirements.
- *Divorced Widow*. You cannot collect this benefit if you remarry before age 60, unless your new marriage ends through the death of your new husband, divorce, or annulment.
- *Disabled Divorced Widow*. If you remarry before you are age 50 and become disabled, you cannot collect this benefit. However, you can become eligible for benefits if your new marriage ends through the death of your new husband, divorce, or annulment.

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*If your ex-husband remarries, your divorced spouse social security benefits will not be affected. (The fact that his wife or another ex-wife collects a spouse benefit does not affect your benefit.)*

**Note:** If you are eligible to collect two social security spouse benefits because you were married twice, you can receive an amount equal to the larger of the two benefits, but not both.

### **Work After Retirement: The "Earnings Test"**

Whether you receive a social security benefit as a worker or spouse, the social security *earnings test* applies to you if you are under age 70. The earnings test means that if you have earnings over a certain amount within a calendar year, you can lose part or all of your social security benefits for that year. The exact amount you can earn before you start losing social security benefits increases each year, and varies according to your age. Disabled workers and spouses have additional restrictions on earnings.

The ex-husband's work after retirement will not reduce his divorced wife's benefit.

For more information on how work after retirement can affect your benefits, contact a social security office.

### **"Offsets" of Benefits From Other Work**

If you have worked and earned your own social security benefit, or you *or* your ex-husband earned a state, local, or federal government pension, these benefits may offset, or cancel out, your divorced spouse benefit. You may end up receiving less in social security divorced spouse benefits than you had expected.

### ***How Your Own Social Security May Affect You as a Divorced Wife or Widow: The Dual Entitlement Rule***

If you are entitled to a social security benefit through your work in addition to a social security benefit as a divorced spouse, the Social Security Administration will deduct an amount equal to *your* worker benefit, dollar for dollar, from your benefit as a divorced spouse. The result is you will be paid only an amount equal to the larger of the two benefits, but not the sum of the two. The Social Security Administration calls this "dual entitlement."

#### Example 1

Irene's social security worker benefit is \$300. As a divorced wife, she would be eligible for a divorced wife benefit of \$210 (50 percent of her ex-husband's benefit of \$420). But since \$300 (her own worker benefit) is more than \$210 (the divorced wife benefit), she will receive only her \$300 a month benefit as a retired worker, not \$510 (the sum of the two benefits).

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|                                | After Offset | If No Offset |
|--------------------------------|--------------|--------------|
| Social Security worker benefit | \$300        | \$300        |
| Social Security spouse benefit | <u>\$0</u>   | <u>\$210</u> |
| TOTAL                          | \$300        | \$510        |

### Example 2

Through her own job, Helen has earned a social security worker benefit of \$180. As a divorced wife, she would be eligible for a spouse benefit of \$250 a month (50 percent of her ex-husband's benefit of \$500). But her own worker benefit of \$180 will be deducted from \$250, leaving her only \$70 to be paid as a divorced wife. She will still get her own \$180 worker benefit plus \$70 as her divorced wife benefit. She will end up getting \$250, not \$430.

|                                | After Offset | If No Offset |
|--------------------------------|--------------|--------------|
| Social Security spouse benefit | \$70         | \$250        |
| Social Security worker benefit | \$180        | \$180        |
| TOTAL                          | <u>\$250</u> | <u>\$430</u> |

### ***How your Own Government Pension May Affect Your Benefits as a Divorced Wife or Widow: The Government Pension Offset Rule***

If you earned or will earn a pension by working as a federal, state, or local government employee, and you were not also covered by social security on the same job as of the last day of your employment, part of your government pension may be deducted from your social security divorced spouse benefit. This is the "Government Pension Offset" Rule.

If the offset applies to you, then an amount equal to two-thirds of your government pension will be subtracted from your social security divorced spouse benefit. If two-thirds of your government pension is more than your social security spouse benefit, you won't be able to collect any part of that social security benefit. (The Government Pension Offset Rule does not affect the amount of your government pension, only your social security benefit.)

If your ex-husband were to be awarded part of your government pension in the divorce, then two-thirds of only the *remaining* portion of your government pension would be offset from your social security spouse benefit.

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- Examples

Eileen was first eligible in 1985 for her government pension of \$600 a month, which she earned as a public school teacher. As a divorced widow, she also would have been eligible for a \$500 a month benefit from social security (based on the amount her ex-husband had collected). But she will actually receive a social security divorced widow benefit of \$500 *minus* two-thirds of \$600.

Here is the way her benefit will be figured:

|                                    |   |                                    |   |   |
|------------------------------------|---|------------------------------------|---|---|
| The Social Security spouse benefit | - | $\frac{2}{3}$ {government pension} | = | Social Security spouse benefit payable  |
| \$500                              | - | $\frac{2}{3}$ (\$600)              | = | Social Security spouse benefit payable. |
| \$500                              | - | \$400                              | = | \$100                                   |

|                                | After Offset | If No Offset  |
|--------------------------------|--------------|---------------|
| Government pension             | \$600        | \$600         |
| Social Security spouse benefit | \$100        | \$500         |
| <b>TOTAL</b>                   | <b>\$700</b> | <b>\$1100</b> |

Eileen will collect her \$600 government pension and \$100 from social security.

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- Vera's federal government pension is \$900 a month. As a divorced wife, she would have been eligible for \$350 a month from social security (50 percent of her ex-husband's benefit of \$700 a month). Two-thirds of \$900 (her government pension) is \$600. Since \$600 is more than her \$350-a-month social security benefit, she will receive no benefit from social security.

|                                | After Offset | If No Offset  |
|--------------------------------|--------------|---------------|
| Government pension             | \$900        | \$900         |
| Social Security Spouse benefit | \$0          | \$350         |
| TOTAL                          | <u>\$900</u> | <u>\$1250</u> |

### *Exceptions to Government Pension Offset Rule*

The offset does not apply to you, if you meet any one of the following three exceptions:

- You filed for a social security spouse benefit before December 1977.
- You became eligible to receive your government pension before December 1982 and you were married at least 20 years. (Being "eligible" does not necessarily mean you were actually collecting your government pension.)
- You were eligible to receive your government pension before July 1983 and you were receiving at least one-half of your financial support from your husband or ex-husband just before he retired, died (before retirement), or became disabled.

These exceptions are the result of changes in the social security law which were made in 1977, 1982, and 1983.

### *More Reductions: The "Windfall Penalty Rule"*

If your ex-husband earned a social security worker benefit from one job and a government pension from a different job that was not covered by social security, his social security worker benefit could be reduced. This, in turn, could reduce your social security divorced spouse benefit, because your benefit is based on the amount he receives. The reduction is called the "Windfall Penalty Rule" and applies if:

- Your ex-husband did not work under social security for at least 30 years, *and*
- He was not *eligible* to collect his social security benefit or government pension before 1986. (Being "eligible" does not necessarily mean he was actually collecting benefits.)

Since the calculation of the windfall penalty is not directly based on the amount of your government pension, the fact that you may have been ordered by the court to pay part of your government pension to your ex-husband won't affect the extent to which your own social security benefit is reduced on account of your "non-social security covered" work.

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The Windfall Penalty Rule uses a complicated formula to recalculate and reduce a worker's social security benefit.

How much the worker's social security benefit is reduced varies from person to person. This formula takes into account the year in which the worker was born, his average earnings, the number of years he worked under social security, and other facts.

The Windfall Penalty Rule can reduce a social security worker benefit by as much as 55 percent, but the reduction in social security can never be an amount greater than half the government pension.

This rule only reduces social security benefits while the worker is receiving his government pension. If your ex-husband dies first, you will be able to receive a social security divorced widow benefit in full, along with any government widow's pension to which you may be entitled.

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**IMPORTANT:** If *you* worked and earned your own social security benefit from one job, but also earned your own government pension from another job that was not covered by social security, *your* social security benefit may be reduced by the Windfall Penalty Rule.

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Contact the Social Security Administration to find out how this rule might affect your benefit.

#### Example 1

Here is how the Windfall Penalty Rule might apply in a "worst case":

Vernon, who was born in 1929, earned a monthly social security benefit of \$287 after working 10 years under social security. He also has a federal government pension of \$950 a month from his work as a letter carrier with the U.S. Postal Service. As a result of the Windfall Penalty Rule, he loses 55 percent of his social security benefit and ends up collecting only \$130 a month in addition to his government pension. Therefore, his ex-wife Bernice receives a social security divorced wife benefit equal to 50 percent of \$130, or \$65 a month.

#### *A Triple Reduction*

If either you or your ex-husband worked under a government retirement system, and at least one of you worked under social security, there is a good chance that you will be affected by more than one "offset."

**Note:** In a situation where more than one offset may apply, it is usually easier to first figure out how much the social security *worker* benefit(s) will be.

Here's an example involving all three types of reductions:

### Example

Evelyn worked off and on as a secretary in small offices in the early years of her marriage. Through this work, she accumulated a social security benefit of \$400 a month. Once divorce seemed imminent, she got a regular clerical job with the federal government, and earned a small civil service pension of \$240 a month.

Her now ex-husband Ed spent his entire career in private industry and recently retired from his job as a credit manager with a social security benefit of \$720. Evelyn's divorced spouse benefit would be equal to 50 percent of \$720, or \$360.

If Evelyn could receive all her benefits in full, her monthly retirement income would be:

|   |               |
|---|---------------|
| Government pension                      | \$240         |
| Social Security worker benefit          | \$400         |
| Social Security divorced spouse benefit | \$360         |
| <b>TOTAL</b>                            | <b>\$1000</b> |

But see what happens to her benefit

1. *Windfall Penalty Rule*. This reduction involves her government pension and her social security worker benefit.

|                                |                        |
|--------------------------------|------------------------|
| Government pension             | \$240                  |
| Social Security worker benefit | \$400 reduced to \$280 |

In Evelyn's particular case, the Windfall Penalty Rule left her with a social security worker benefit of \$280.

Next, see how much the social security spouse benefit will be. First, see if it will be reduced by the *Dual Entitlement Rule*. Then, apply the *Government Pension Offset Rule*. In this case, we start out with Evelyn's basic divorced wife benefit of \$360 (50 percent of \$720, Ed's worker benefit).

2. *Dual Entitlement Rule*. This reduction counts her social security worker benefit, or the remaining portion of it - \$280 - against her social security spouse benefit of \$360: \$360 minus \$280 is \$80.

|                                |                       |
|--------------------------------|-----------------------|
| Social Security worker benefit | \$280                 |
| Social Security spouse benefit | \$360 reduced to \$80 |

3. *Government Pension Offset Rule.* This reduction involves her government pension and her social security spouse benefit (which is now down to \$80). The government pension is \$240. Two-thirds of \$240 is \$160. Since \$160 is more than her \$80 social security spouse benefit, the social security benefit is completely offset and she collects nothing as a spouse.

|                                |                      |
|--------------------------------|----------------------|
| Government pension             | \$240                |
| Social Security spouse benefit | \$ 80 reduced to \$0 |

Here's what Evelyn ends up with:

|                                | After Offset | If No Offset  |
|--------------------------------|--------------|---------------|
| Government pension             | \$240        | \$240         |
| Social Security worker benefit | \$280        | \$400         |
| Social Security spouse benefit | \$0          | \$360         |
| TOTAL                          | <u>\$520</u> | <u>\$1000</u> |

Instead of \$1000 a month, she receives \$520 a month.

### Getting Information

By going to the Social Security Administration's website ([www.ssa.gov](http://www.ssa.gov)) or by calling their toll-free telephone number (800) 772-1213, you get request general information, social security publications, and an estimate of your social security benefits. Calls are answered between 7:00 a.m. and 7:00 p.m. weekdays. You can also receive free assistance through your local social security office. See your telephone "white pages" for office locations.