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Social Security and Same-Sex Marriage: Frequently Asked Questions

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Summary

In *United States v. Windsor*, the U.S. Supreme Court held that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional, finding, in part, that it violated the Constitution's equal protection and substantive due process guarantees. Section 3 had required that marriage be defined as the union of one man and one woman for the purpose of federal enactments. According to the court, federal statutes that refer to a marriage for federal purposes should be interpreted as applying equally to married same-sex couples. The Court did not address Section 2 of DOMA, which allows individual states to refuse recognition of same-sex marriages.

In response to the *Windsor* decision, the Social Security Administration (SSA) has started processing Old-Age, Survivors, and Disability Insurance (OASDI) applications for some claimants in same-sex marriages. OASDI is commonly known as Social Security. Eligibility for spousal benefits depends on marital status as defined by the state. However, the definition of marriage for the purposes of Social Security determinations remains in flux as state legislatures and courts continue to change and interpret these laws. It has been reported that SSA is currently working with the Department of Justice on interpreting the *Windsor* decision and state laws regarding same-sex marriage.

This report addresses a number of frequently asked questions regarding the eligibility of same-sex couples for Social Security benefits and the interpretation of state marriage laws. These questions include those relating to general eligibility and the application process for same-sex couples and those in other types of legal relationships.

Contents

Overview of Social Security	2
What Is Social Security?	2
How Does A Worker Become Eligible for Benefits?	2
How Much Does A Worker Receive in Benefits?.....	3
How Does a Family Member Become Eligible for Benefits?	4
How Does the Social Security Act Determine Family Status?.....	5
How Much Does a Family Member Receive in Benefits?	6
SSA’s Current Policy for Claims Affected by a Same-Sex Marriage	6
The Development of SSA’s Policy for Claims Affected by a Same-Sex Marriage	10
Frequently Asked Questions (FAQs)	10
General Eligibility	11
Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries and lives in a state that recognizes same-sex marriage?	11
Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries in a state that recognizes same-sex marriage but lives in another state at the time of the application?	11
Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries in a state that recognizes same-sex marriage but one spouse lives in another state at the time of the application?	11
Is an applicant in a same-sex marriage eligible for spousal benefits if the couple moves to a different state during the application process?.....	12
Is an applicant in a same-sex marriage eligible for spousal benefits if the Number Holder lives in a state that does not recognize same-sex marriage?	12
Is an applicant in a same-sex marriage eligible for survivors’ benefits if the Number Holder has died in a state that does not recognize same-sex marriage?.....	12
What is the duration-of-marriage requirement for same-sex couples?.....	13
Is a stepchild eligible for child’s benefits on a Number Holder’s record if the Number Holder’s relationship to the child is based on a same-sex marriage?.....	13
How does the SSA determine where a claimant lives, i.e. his “domicile”?	13
Is marital status relevant to a claim for retirement or disability benefits filed by a Number Holder in a same-sex marriage?.....	14
Different Types of Legal Relationships	14
Does an applicant qualify for spousal benefits if he is/was in a civil union?.....	14
Does an applicant qualify for spousal benefits if he is/was in a domestic partnership?	15
Marriages in Different Jurisdictions	16
Does SSA recognize a same-sex marriage or nonmarital legal relationship if the ceremony took place in a foreign jurisdiction?	16
Does SSA consider marriages valid if they were conducted in a state other than the domicile-state?	16
Changes in the Law	17
Does SSA consider same-sex marriages as valid that were celebrated in a state before the state permitted same-sex marriage?	17
What happens to a Social Security application of a same-sex applicant if a state changes its marital laws during the application process for spousal benefits?.....	17

How does a court overturning a state marriage ban affect the Social Security application of a same-sex applicant?.....	17
The Application Process	18
What happens to an application for which marital status is relevant and SSA does not recognize the same-sex marriage as valid?	18
How is an SSA decision appealed?	18
Miscellaneous.....	18
Have determinations of family status always relied on the place-of-domicile rule?.....	18

Tables

Table 1. Dates on Which States Permitted or Recognized Same-Sex Marriage	7
Table 2. Dates on Which States Permitted or Recognized Nonmarital Legal Relationships.....	9
Table A-1. Social Security Benefits for the Worker’s Family Members.....	20

Appendixes

Appendix. Social Security Benefits for Family Members	20
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Contacts

Author Contact Information.....	22
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In *United States v. Windsor*,¹ the U.S. Supreme Court held that Section 3 of the Defense of Marriage Act (DOMA)² was unconstitutional, finding, in part, that it violated the Constitution's equal protection and substantive due process guarantees.³ Section 3 had required that marriage be defined as the union of one man and one woman for the purpose of federal enactments. In *Windsor*, the plaintiff and her late spouse had legally married in Canada but resided in New York, a state that did not legally recognize same-sex marriage at the time of her suit. Under DOMA, the estate of the plaintiff's late spouse could not claim the unlimited marital deduction for the purposes of the federal estate tax, requiring the estate to pay the \$363,053 owed in taxes. The Supreme Court relied on the principles of federalism, equal protection, and substantive due process to strike down Section 3 of DOMA, stating:

No legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment.⁴

Therefore, according to the court, federal statutes that refer to a marriage for federal purposes should be interpreted as applying equally to legally married same-sex couples. The Court did not address Section 2 of DOMA, which allows individual states to refuse recognition of same-sex marriages.⁵

In response to the *Windsor* decision, the Social Security Administration (SSA) has started processing Old-Age, Survivors, and Disability Insurance (OASDI) applications for some claimants in a same-sex marriage. OASDI is commonly known as Social Security. Eligibility for spousal benefits depends on marital status as defined by the state. However, the definition of marriage for the purposes of Social Security determinations remains in flux as state legislatures and courts continue to change and interpret these laws.⁶ It has been reported that SSA is currently working with the Department of Justice on interpreting the *Windsor* decision and state laws regarding same-sex marriage.

This report addresses a number of frequently asked questions regarding the eligibility of same-sex couples for Social Security benefits and the interpretation of state marriage laws. These questions include those relating to general eligibility and the application process for same-sex couples and those in other types of legal relationships.

This report begins with an overview of Social Security and the basic eligibility requirements for benefits. The report then addresses current SSA policy with regards to same-sex couples. The report then discusses various legal and policy issues relating to Social Security and same-sex couples in a question-and-answer format. This report will be updated as necessary to reflect major changes in law and policy.

¹ For a discussion on the *U.S. v. Windsor* decision, see CRS Report R43481, *Same-Sex Marriage: A Legal Background After United States v. Windsor*, by Alison M. Smith.

² P.L. 104-199.

³ *U.S. v. Windsor*, 133 S.Ct. 2675 (2013).

⁴ *Windsor*, 133 S.Ct. at 2696.

⁵ 28 U.S.C. §1738C.

⁶ For more information about recent same-sex marriage litigation, see CRS Report R43886, *Same-Sex Marriage: A Legal Overview*, by Rodney M. Perry.

Overview of Social Security

What Is Social Security?

Social Security is a federally administered, work-related entitlement program⁷ authorized by Title II of the Social Security Act.⁸ The program is financed primarily by payroll taxes paid by individuals who work in Social Security-covered employment and their employers.⁹ Employees and their employers each pay 6.2% of covered earnings, up to an annual limit on taxable earnings; self-employed individuals pay 12.4% of net self-employment income, up to an annual limit on taxable earnings.¹⁰ The program is also credited with federal income taxes that some beneficiaries pay on a portion of their benefits; reimbursements from the general fund of the Treasury for a variety of purposes; and interest income from the Treasury on the investment of Social Security revenues in special federal government obligations.¹¹

The program provides monthly cash benefits to eligible retired or disabled workers and their family members, and to the family members of deceased workers.¹² To be eligible for a retired-worker benefit, a worker needs 10 years of covered employment, among other requirements. Fewer years of covered employment are needed to qualify for a disabled-worker benefit, depending on the age of the worker when he or she becomes disabled. As of December 2014, there were approximately 59 million Social Security beneficiaries: 42 million retired workers and their family members (71%); 11 million disabled workers and their family members (19%); and 6 million survivors of deceased workers (10%).¹³ For more information, see CRS Report R42035, *Social Security Primer*, by Dawn Nuschler.

How Does A Worker Become Eligible for Benefits?

A worker becomes eligible for Social Security benefits by working in Social Security-covered employment for a specified period, among other requirements.¹⁴ To be eligible for a *retired-*

⁷ Because Social Security is a federal entitlement program, spending on benefit payments is not subject to the annual appropriations process. Rather, Social Security benefit payments are legal obligations of the federal government, and eligible beneficiaries may have legal recourse if full payment under the law is not provided. Eligible persons are those who meet specific eligibility criteria established in the authorizing law. For more information, see CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, by Bill Heniff Jr.

⁸ 42 U.S.C. §§401-434.

⁹ An estimated 167.5 million workers (94% of workers) are covered by Social Security. Social Security Administration (SSA), *2015 Social Security/SSI/Medicare Information*, February 9, 2015, at <http://www.socialsecurity.gov/legislation/2015%20Fact%20Sheet.pdf>.

¹⁰ In 2015, the annual limit on taxable earnings is \$118,500. Self-employed individuals are required to pay Social Security payroll taxes if they have annual net earnings of \$400 or more. Only 92.35% of net self-employment income (up to the annual limit) is taxable.

¹¹ For more information, see CRS Report RL33028, *Social Security: The Trust Fund*, by Dawn Nuschler and Gary Sidor.

¹² A person who is receiving Social Security benefits may continue to have earnings from work. In some circumstances, however, those earnings may affect the amount of the person's monthly benefit. For more information, see CRS Report R41242, *Social Security Retirement Earnings Test: How Earnings Affect Benefits*, by Dawn Nuschler.

¹³ SSA, *Monthly Statistical Snapshot, December 2014*. See the latest edition of the *Monthly Statistical Snapshot* at http://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/index.html.

¹⁴ Section 202 of the Social Security Act (*Old-Age and Survivors Insurance [OASI] Benefit Payments*) specifies the (continued...)

worker benefit, a worker needs 40 earnings credits (10 years of covered employment).¹⁵ Fewer credits are needed to qualify for a *disabled-worker* benefit if the worker is under age 62. The number of credits needed varies, depending on the age of the worker when he or she becomes disabled. For example, a worker who becomes disabled before age 24 needs six credits (1½ years of covered employment) in the three years before the onset of the disability. For Social Security purposes, disability is defined as the inability to engage in *substantial gainful activity* (SGA) by reason of a medically determinable physical or mental impairment that is expected to last for at least 12 months or result in death.¹⁶ Generally, the worker must be unable to do any kind of substantial work that exists in the national economy, taking into account age, education, and work experience.¹⁷

A worker is eligible to receive a retirement benefit as early as age 62.¹⁸ However, if a worker begins receiving a retirement benefit before the full retirement age (FRA), his or her benefit is permanently reduced to take into account early retirement and the longer expected period of benefit receipt. The FRA ranges from age 65 to age 67, depending on the worker's year of birth.¹⁹

As of December 2014, retired workers accounted for 66% of the beneficiary population, and disabled workers accounted for 15% of all beneficiaries.²⁰

How Much Does A Worker Receive in Benefits?

A worker's monthly Social Security benefit is based on his or her career-average earnings in covered employment. Specifically, a worker's *primary insurance amount* (PIA) is his or her monthly benefit payable at the FRA. The PIA is determined based on the following steps: (1) the worker's annual earnings in covered employment are indexed to historical wage growth, to bring past earnings up to near-current wage levels;²¹ (2) the highest 35 years of indexed earnings are

(...continued)

eligibility requirements for various categories of benefits payable under the OASI program: old-age insurance benefits payable to the worker, as well as wife's insurance benefits, husband's insurance benefits, child's insurance benefits, widow's insurance benefits, widower's insurance benefits, mother's and father's insurance benefits, and parent's insurance benefits. Section 202 of the Social Security Act is available at http://ssa.gov/OP_Home/ssact/title02/0202. Similarly, Section 223 of the Social Security Act (*Disability Insurance [DI] Benefit Payments*) specifies the eligibility requirements for benefits payable under the DI program. Section 223 of the Social Security Act is available at http://ssa.gov/OP_Home/ssact/title02/0223.htm.

¹⁵ A worker can earn up to four earnings credits (or quarters of coverage) per calendar year. In 2015, a worker earns one earnings credit for each \$1,220 in covered earnings, up to a maximum of four earnings credits with covered earnings of \$4,880 or more.

¹⁶ In 2015, SSA defines SGA as average monthly earnings above \$1,090 for most individuals and \$1,820 for statutorily blind individuals.

¹⁷ For more information, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by William R. Morton.

¹⁸ There is no corresponding age requirement for receipt of disabled-worker benefits. However, when a disabled-worker beneficiary reaches the full retirement age, his or her disability benefits are re-categorized as retirement benefits. The amount of the monthly benefit does not change.

¹⁹ The full retirement age is 67 for workers who are born in 1960 or later. For more information, see CRS Report R41962, *The Social Security Retirement Age: In Brief*, by Gary Sidor.

²⁰ SSA, *Monthly Statistical Snapshot, December 2014*.

²¹ Annual earnings through age 60 are indexed; earnings after age 60 are counted at nominal value.

summed to get the total earnings;²² (3) the total earnings are divided by 420 months (35 years x 12 months) to get the amount of average indexed monthly earnings (AIME) over the worker's career in covered employment; and finally, (4) a progressive benefit formula is applied to the worker's AIME (the progressive benefit formula is designed to provide a higher replacement rate for lower-wage workers compared to higher-wage workers).²³

The monthly benefit that is payable to a worker may be less than or greater than his or her PIA, depending on the circumstances. For example, a worker's benefit is permanently reduced if he or she claims retirement benefits *before* the full retirement age, to take into account the longer expected period of benefit receipt (based on average life expectancy).²⁴ Similarly, a worker's benefit is permanently increased if he or she claims retirement benefits *after* the full retirement age (up to age 70), to take into account the shorter expected period of benefit receipt.²⁵ In addition to benefit adjustments based on age, other benefit adjustments may apply, such as reductions/offsets based on simultaneous entitlement to more than one type of Social Security benefit (a Social Security retired-worker benefit and a spousal benefit, for example) or receipt of a pension from work that was not covered by Social Security.

As of December 2014, the average monthly benefit was \$1,329 among retired workers and \$1,165 among disabled workers.²⁶

How Does a Family Member Become Eligible for Benefits?

In addition to qualifying for Social Security benefits based on one's own work record, a person may qualify for benefits based on another person's work record as an eligible family member. Benefits are payable to the spouse, divorced spouse, or child of a retired or disabled worker. Benefits are also payable to the widow(er), divorced widow(er), child, or dependent parent of a deceased worker. In addition, a mother's/father's benefit is payable to a young widow(er) who is caring for a deceased worker's child, if the child is under the age of 16 or disabled and entitled to benefits.²⁷ See **Table A-1** for a summary of Social Security benefits payable to family members and the basic eligibility requirements for each type of benefit.

As of December 2014, dependents and survivors of retired, disabled, or deceased workers accounted for about 19% of the beneficiary population.²⁸

²² If a worker has fewer than 35 years of earnings in covered employment, years with no earnings are entered as zeroes in the benefit computation, resulting in a lower initial monthly benefit. Fewer than 35 years of earnings may be counted in the computation of a disabled-worker benefit. For more information, see CRS Report R43370, *Social Security Disability Insurance (SSDI): Becoming Insured, Calculating Benefit Payments, and the Effect of Dropout Year Provisions*, by Umar Moulta-Ali.

²³ Replacement rates can be measured in different ways; stated generally, replacement rates show a worker's initial benefit as a percentage of his or her pre-retirement earnings.

²⁴ If a worker claims retirement benefits before the full retirement age, the benefit payable is less than his or her PIA. However, because a disabled worker's benefit is not reduced for entitlement before the full retirement age, a disabled worker's benefit is equal to his or her PIA.

²⁵ If a worker claims retirement benefits after the full retirement age, the benefit payable is greater than his or her PIA.

²⁶ SSA, *Monthly Statistical Snapshot, December 2014*.

²⁷ To be eligible for a mother's/father's benefit, the person must be unmarried and must not be entitled to a widow(er)'s benefit.

²⁸ SSA, *Monthly Statistical Snapshot, December 2014*.

How Does the Social Security Act Determine Family Status?

Sections 216(a) through (g) of the Social Security Act define the terms spouse, surviving spouse, wife, widow, divorced spouse, child, husband, and widower for purposes of qualifying for benefits as an eligible family member of the worker.²⁹ In order to qualify for these benefits as one of these family members, the applicant must meet the relationship requirements to the Number Holder (also referred to as the insured) as set out in these provisions. The Number Holder is the worker on whose record benefits are claimed. Section 216(h) of the Social Security Act (*Determination of Family Status*) references the use of state law in the determination of entitlement to Social Security benefits as a spouse, surviving spouse, child, or parent of the worker.³⁰ While state law does not affect a person's entitlement to benefits as a retired or disabled worker, it does affect a person's entitlement to benefits as a family member of a retired, disabled or deceased worker.

In determining family relationship for purposes of a person's application for benefits as a *spouse* or *surviving spouse*, SSA looks to the laws of the state - as interpreted by the courts of that state - where the Number Holder is domiciled at the time of the application, or at the time of the Number Holder's death, as specified in Section 216(h)(1)(A) of the Social Security Act.³¹ SSA has interpreted "domiciled" in this context to mean the "true and fixed home (legal domicile) of a person...to which a person intends to return whenever he or she is absent."³² The relationship requirement is met if the applicant and the Number Holder were validly married under state law as interpreted by the courts of that state at the time of application for spousal benefits, or at the time of the Number Holder's death in the case of an application for surviving spouse benefits.

Alternatively, the relationship requirement is met if, under state intestate law,³³ the applicant would be able to inherit a wife's, husband's, widow's, or widower's share of the Number Holder's personal property if the Number Holder were to die without leaving a will.³⁴ The Uniform Probate Code, which serves as a guideline for the intestate laws of some states, does not explicitly define "spouse" or "marriage." For the purposes of defining marriage in intestate law, the Uniform Probate Code instead directs state legislatures to incorporate that state's particular legal definition of marriage.³⁵

If a relationship by marriage cannot be established under state law, the applicant may be eligible for benefits as the wife, husband, widow, or widower of the Number Holder under other circumstances (i.e., based upon a deemed valid marriage), as specified in Section 216(h)(1)(B) of the Social Security Act.³⁶ For example, the regulations state, in part:

You will be deemed to be the wife, husband, widow, or widower of the insured if, in good faith, you went through a marriage ceremony with the insured that would have resulted in a valid marriage except for a legal impediment. A legal impediment includes only an

²⁹ 42 U.S.C. §416(a)-(g).

³⁰ In this CRS report, the discussion focuses primarily on spouses and surviving spouses.

³¹ 42 U.S.C. §416(h)(1)(A).

³² 20 C.F.R. §404.303.

³³ Intestate law determines the inheritance of property when a person dies without leaving a valid will.

³⁴ 20 C.F.R. §404.345 (available at http://www.ssa.gov/OP_Home/cfr20/404/404-0345.htm).

³⁵ Uniform Probate Code §2-102.

³⁶ 42 U.S.C. §416(h)(1)(B).

impediment which results because a previous marriage had not ended at the time of the ceremony or because there was a defect in the procedure followed in connection with the intended marriage.³⁷

Therefore, under current Social Security law, the determination of entitlement to benefits as a spouse or surviving spouse can vary from state to state, regardless of the gender of each individual in a couple. With respect to same-sex married couples, two factors in determining entitlement to Social Security benefits as a spouse or surviving spouse are that (1) the couple was validly married in a state that permits same-sex marriage and (2) the Number Holder is domiciled in a state that recognizes same-sex marriage at the time of application for spousal benefits, or at the time of the Number Holder's death in the case of an application for surviving spouse benefits. In addition, persons in civil unions or other nonmarital legal same-sex relationships can qualify for Social Security benefits as a spouse or surviving spouse in some cases.³⁸

How Much Does a Family Member Receive in Benefits?

Benefits payable to family members are equal to a specified percentage of the worker's PIA, subject to a maximum family benefit. For example, the spouse of a retired worker may receive up to 50% of the retired worker's PIA, and the widow(er) of a deceased worker may receive up to 100% of the deceased worker's PIA. Benefits payable to family members are subject to adjustments based on a number of factors, including the person's age at entitlement, receipt of a Social Security benefit based on his or her own work in covered employment, and receipt of a pension based on work that was not covered by Social Security. In addition, there is an overall limit on the total amount of benefits payable to a family based on a worker's record. If total benefits payable to the family exceed this limit (the maximum family benefit), the benefit payable to each *dependent or survivor* is reduced on a proportional basis.³⁹ **Table A-1** provides a summary of Social Security benefits payable to family members, including the basic eligibility requirements and the basic benefit amount before any applicable adjustments.

As of December 2014, the average monthly benefit was \$673 among spouses of retired workers, \$315 among spouses of disabled workers, and \$1,276 among nondisabled widow(er)s.⁴⁰

SSA's Current Policy for Claims Affected by a Same-Sex Marriage

SSA is currently processing Social Security benefit claims in which entitlement depends on a same-sex marriage or nonmarital legal relationship, such as a civil union or domestic partnership.⁴¹ Claimants whose familial connection to the Number Holder has been established

³⁷ 20 C.F.R. §404.346 (available at http://www.ssa.gov/OP_Home/cfr20/404/404-0346.htm).

³⁸ See *Same-Sex Couples* page on the SSA website at <http://www.socialsecurity.gov/people/same-sex-couples/>. See also U.S. Department of Justice, Office of the Attorney General, Memorandum to the President, *Implementation of United States v. Windsor*, June 20, 2014, available at <http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>.

³⁹ The worker's benefit is not subject to reduction under the family maximum. Benefits payable to a *divorced* spouse based on the worker's record are not counted for purposes of the family maximum.

⁴⁰ SSA, *Monthly Statistical Snapshot, December 2014*.

⁴¹ POMS GN 00210.002 Same-Sex Marriage – Determining Marital Status for Title II and Medicare Benefits.

via a recognized same-sex marriage or nonmarital legal relationship and who meet all other requirements are eligible to receive family benefits.⁴² As noted earlier, Section 216(h) of the Social Security Act allows SSA to approve family benefit claims only if the determination of family status is deemed valid under state law. Because of differences in marriage and inheritance laws across states, SSA is currently unable to approve all claims in which entitlement or eligibility is affected by a same-sex marriage or nonmarital legal relationship.

SSA determines which same-sex marriage claims can be approved based on guidance provided by the Department of Justice (DOJ) in conjunction with the agency’s own counsel. **Table 1** lists the states that SSA recognizes as having laws that allow same-sex marriage (as of March 20, 2015). SSA processes benefit claims from individuals in these states based on the date(s) that these states permitted or recognized same-sex marriage.

Table 1. Dates on Which States Permitted or Recognized Same-Sex Marriage
(as of March 20, 2015)

State	Date Same-Sex Marriages Were Permitted in the State	Date Same-Sex Marriages from Any Other State Were Recognized
Alabama	February 9, 2015	February 9, 2015
Alaska	October 17, 2014	October 17, 2014
Arizona	October 17, 2014	October 17, 2014
California	June 16, 2008 – November 4, 2008 June 26, 2013 - Present	June 16, 2008 – November 4, 2008 June 26, 2013 - Present
Colorado	October 7, 2014	October 7, 2014
Connecticut	November 12, 2008	November 12, 2008
Delaware	July 1, 2013	July 1, 2013
District of Columbia	March 9, 2010	July 7, 2009
Florida	January 5, 2015	January 5, 2015
Hawaii	December 2, 2013	December 2, 2013
Idaho	October 15, 2014	October 15, 2014
Illinois	December 16, 2013	February 21, 2014
Indiana	June 25- June 27, 2014 October 6, 2014 - Present	June 25 – June 27, 2014 October 6, 2014 - Present
Iowa	April 20, 2009	April 30, 2009
Kansas	November 12, 2014	November 12, 2014
Maine	December 29, 2012	December 29, 2012
Maryland	January 1, 2013	February 23, 2010
Massachusetts	May 17, 2004	May 17, 2004

⁴² SSA is also processing claims for other programs affected by a same-sex marriage, such as Supplemental Security Income (SSI) and Medicare (applications only). For more information, see Social Security Administration, *Same-Sex Couples*, accessed March 2015, <http://www.ssa.gov/people/same-sex-couples/>.

State	Date Same-Sex Marriages Were Permitted in the State	Date Same-Sex Marriages from Any Other State Were Recognized
Michigan	March 21 – March 22, 2014	March 21 – March 22, 2014
Minnesota	August 1, 2013	August 1, 2013
Missouri	a	October 6, 2014
Montana	November 19, 2014	November 19, 2014
Nevada	October 9, 2014	October 9, 2014
New Hampshire	January 1, 2010	January 1, 2010
New Jersey	October 21, 2013	a
New Mexico	August 21, 2013	January 4, 2011
New York	July 24, 2011	February 1, 2008
North Carolina	October 10, 2014	October 10, 2014
Oklahoma	October 6, 2014	October 6, 2014
Oregon	May 19, 2014	October 16, 2013
Pennsylvania	May 20, 2014	May 20, 2014
Rhode Island	August 1, 2013	February 20, 2007
South Carolina	November 19, 2014	November 19, 2014
Utah	December 20, 2013 – January 6, 2014	December 20, 2013 – January 6, 2014
	October 6, 2014 - Present	October 6, 2014 – Present
Vermont	September 1, 2009	September 1, 2009
Virginia	October 6, 2014	October 6, 2014
Washington	December 6, 2012	December 6, 2012
West Virginia	October 9, 2014	October 9, 2014
Wisconsin	June 6 – June 13, 2014	June 6 – June 13, 2014
	October 6, 2014 - Present	October 6, 2014 - Present
Wyoming	October 21, 2014	October 21, 2014

Source: Adapted from Social Security Administration (SSA), Program Operations Manual System (POMS), *GN 00210.003 Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriage*, March 20, 2015, at <http://policy.ssa.gov/poms.nsf/lnx/0200210003>.

Notes: Because this information is subject to change, please visit the link above for the latest state-specific guidance.

a. SSA instructions are to hold claims.

Similarly, **Table 2** lists the states with nonmarital legal relationships that SSA recognizes as meeting the family status requirements under Section 216(h) of the Social Security Act (as of January 26, 2015). SSA processes benefit claims from individuals in these states based on the date(s) that these states permitted or recognized certain nonmarital legal relationships.

Table 2. Dates on Which States Permitted or Recognized Nonmarital Legal Relationships
(as of January 26, 2015)

State	Relationship Type	Inheritance Rights	Effective Date
Arizona	Domestic Partnership	No	a
Arizona	Civil Union	No	a
California	Domestic Partnership	Yes	January 1, 2000
Colorado	Designated Beneficiary (DB)	Yes, unless specifically excluded in the DB agreement	July 1, 2009
Colorado	Civil Union	Yes	May 1, 2013
Connecticut	Civil Union	Yes	October 1, 2005 – October 1, 2010
Delaware	Civil Union	Yes	January 1, 2012 – July 1, 2014
District of Columbia	Domestic Partnership	Yes	January 26, 2006
Hawaii	Reciprocal Beneficiary	Yes	June 1, 1997 –December 2, 2013
Hawaii	Civil Union	Yes	January 1, 2012
Illinois	Civil Union	Yes	June 1, 2011
Maine	Domestic Partnership	Yes	July 30, 2004
Maryland	Domestic Partnership	No	a
Minnesota	Domestic Partnership (Municipal)	No	a
Nevada	Domestic Partnership	Yes	October 1, 2009
New Hampshire	Civil Union	Yes	January 1, 2008 – December 31, 2009
New Jersey	Domestic Partnership	Yes	July 10, 2004 – February 19, 2007
New Jersey	Civil Union	Yes	February 19, 2007
New York	Domestic Partnership	No	a
Oregon	Domestic Partnership	Yes	February 4, 2008
Rhode Island	Civil Union	Yes	June 1, 2011 – August 1, 2013
Vermont	Civil Union	Yes	July 1, 2000 – September 1, 2009
Vermont	Reciprocal Beneficiary	No	a
Washington	Domestic Partnership	Yes	July 22, 2007
Wisconsin	Domestic Partnership	Yes	August 3, 2009

Source: Adapted from SSA, POMS, GN 00210.004 *Nonmarital Legal Relationships (Such as Civil Unions and Domestic Partnerships)*, January 26, 2015, <http://policy.ssa.gov/poms.nsf/lnx/0200210004>.

Notes: Because this information is subject to change, please visit the link above for the latest state-specific guidance.

- a. Not applicable (generally due to the absence of inheritance rights granted for that particular legal relationship).

The Development of SSA's Policy for Claims Affected by a Same-Sex Marriage

On June 26, 2013 (the date of the *Windsor* decision), President Barack Obama directed the Attorney General to work with other members of his Cabinet to assess the decision's impact on federal programs in order to ensure the "swift and smooth" implementation of the decision.⁴³ Shortly thereafter, SSA began working with DOJ to identify and resolve legal questions surrounding the implementation of the decision, as well as develop guidance for SSA personnel in processing claims in which entitlement or eligibility is affected by a same-sex marriage.⁴⁴

Once initial guidance was developed, the processing of claims affected by a same-sex marriage was rolled out gradually. In August 2013, SSA started processing some retirement spousal claims for same-sex married couples.⁴⁵ Later that year, SSA began to process some widow(er)'s claims by surviving members of same-sex marriages.⁴⁶ In June 2014, SSA published new guidance that allowed the agency to recognize certain nonmarital legal relationships as marriages for determining entitlement to Social Security benefits.⁴⁷ As of the date of this report, SSA is processing nearly all types of family benefit claims in which entitlement or eligibility is affected by a same-sex marriage or nonmarital legal relationship.⁴⁸

Frequently Asked Questions (FAQs)⁴⁹

This section answers common questions regarding same-sex couples and Social Security. Specifically, it discusses questions about same-sex marriage and (1) the basic eligibility criteria for Social Security family benefits; (2) how different jurisdictions and legal relationships affect eligibility; and (3) SSA's application process. This section is not intended to address every eligibility contingency concerning same-sex marriage.

⁴³ Memorandum to the President from Eric Holder, the Attorney General, June 20, 2014, <http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>.

⁴⁴ Social Security Administration, "Update on the Supreme Court Decision Regarding the Defense of Marriage Act and Its Implications for Social Security Benefits," press release, July 17, 2013, <http://www.ssa.gov/news/press/releases.html#!/post/7-2013-1>.

⁴⁵ Social Security Administration, "Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on Payments to Same-Sex Couples," press release, August 9, 2013, <http://www.ssa.gov/news/press/releases.html#!/post/8-2013-1>.

⁴⁶ Social Security Administration, "Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on New Payments to Same-Sex Married Couples," press release, December 16, 2013, <http://www.ssa.gov/news/press/releases.html#!/post/12-2013-2>.

⁴⁷ Social Security Administration, "Social Security Defines Policy for Same-Sex Married Couples: Agency Extends Benefits Broadly, Subject to Legal Constraints," press release, June 20, 2014, <http://www.ssa.gov/news/press/releases.html#!/post/6-2014-1>.

⁴⁸ As of the date of this report, SSA is "holding," or waiting to make a final determination on, divorced spousal benefit claims involving a same-sex marriage or nonmarital legal relationship.

⁴⁹ For more answers to FAQs on Social Security and same-sex couples, see Social Security Administration, *Frequently Asked Questions: Same-Sex Couples*, accessed January 2015, <https://faq.ssa.gov/link/portal/34011/34019/ArticleFolder/452/Same-Sex-Couples>.

General Eligibility

Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries and lives in a state that recognizes same-sex marriage?

Yes, if the applicant meets all of the other requirements for entitlement to Social Security benefits. In order for SSA to recognize a same-sex couple as married, the couple must have a valid marriage and the Number Holder must be domiciled in a state that recognizes such marriage at the time of the application.⁵⁰ For example, Lauren (the applicant) and Allison (the Number Holder) marry in Washington (WA) after WA recognizes same-sex marriage. While they are domiciled in WA, Lauren files for spousal benefits on Allison's record. If they meet all other factors of entitlement, SSA would likely find that Lauren is eligible for Social Security benefits.

Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries in a state that recognizes same-sex marriage but lives in another state at the time of the application?

Yes, if the state in which the Number Holder is domiciled at the time of the application would recognize the same-sex marriage. The same-sex couple does not need to live in the same state in which they were married for benefit eligibility. According to the Social Security Act, the same-sex couple is married if the “courts of the State in which such insured individual [Number Holder] *is domiciled* at the time such applicant files [an] application ... would find that such applicant and such insured individual were validly married.”⁵¹ Therefore, the state where the Number Holder lives at the time of the application must recognize that out-of-state same-sex marriage, in order for SSA to consider the same-sex couple validly married for benefit eligibility. For example, David (the applicant) and Michael (the Number Holder) marry in WA after WA recognizes same-sex marriage. After the marriage ceremony, the couple then moves to California (CA), which recognizes out-of-state same-sex marriages. Additionally, Michael is living in California at the time David files the application for spousal benefits. Because Michael is domiciled in a state that recognizes out-of-state same-sex marriages at the time David files the application, David would be eligible for spousal benefits on Michael's record, if all other requirements were met.

Is an applicant in a same-sex marriage eligible for spousal benefits if the couple marries in a state that recognizes same-sex marriage but one spouse lives in another state at the time of the application?

Yes, if the state in which the Number Holder is domiciled at the time of the application would recognize the same-sex marriage. The Social Security Act does not require couples to be domiciled in the same state to meet the marital relationship eligibility requirements. SSA's determination of marital status for Social Security benefits depends on whether the state where

⁵⁰ See 42 U.S.C. §416(h)(1)(A)(i) (“if the courts of the State in which such insured individual is domiciled at the time such applicant files [an] application ... would find that such applicant and such insured individual were validly married at the time such applicant files such application”).

⁵¹ 42 U.S.C. §416(h)(1)(A)(i)(emphasis added).

the *Number Holder* is domiciled would recognize her marriage with the applicant.⁵² If, at the time of the application, the applicant lives in a state that does recognize same-sex marriage but the Number Holder is domiciled in a state that does not recognize such marriages, SSA would not consider the applicant and Number Holder validly married for the purposes of benefit eligibility. For example, Carolyn (the applicant) and Barbara (the Number Holder) marry in WA after WA recognizes same-sex marriage. At the time of the application, Carolyn is domiciled in WA, but Barbara is domiciled in Kentucky (KY), which does not recognize same-sex marriages. Therefore, Carolyn would not be eligible for spousal benefits on Barbara’s wage record.

Is an applicant in a same-sex marriage eligible for spousal benefits if the couple moves to a different state during the application process?

The Social Security Act directs SSA to look at whether the courts of the state where the Number Holder is domiciled “at the time such applicant *files* [an] application”⁵³ would consider the couple as validly married. Thus, if the state in which the Number Holder was domiciled at the time the spouse filed the application would recognize the marriage, SSA would consider the couple as married for the purposes of benefit entitlement, even if the couple moves to another state after the application is filed. For example, David (the applicant) and Michael (the Number Holder) are domiciled and marry in WA after WA recognizes same-sex marriage. David files for spousal benefits on Michael’s record while domiciled in WA. While the application is pending, David and Michael move to and establish their domicile in Oregon (OR), which recognizes same-sex marriage. They meet all other factors of entitlement. SSA would recognize the couple as married because when the claim was filed, David and Michael were domiciled in a state that recognizes same-sex marriage.

Is an applicant in a same-sex marriage eligible for spousal benefits if the Number Holder lives in a state that does not recognize same-sex marriage?

Generally, an applicant in a same-sex marriage is not eligible for spousal benefits if the Number Holder lives in a state that does not recognize same-sex marriage. For an applicant to receive benefits based on the work record of his spouse (referred to as Number Holder), the applicant and the Number Holder must qualify as married under the Social Security Act and state law. Under SSA’s current interpretation of the Social Security Act’s definition of family status found in Section 216(h), the agency would not recognize the same-sex marriage because the state where the Number Holder is domiciled does not recognize same-sex marriage.⁵⁴

Is an applicant in a same-sex marriage eligible for survivors’ benefits if the Number Holder has died in a state that does not recognize same-sex marriage?

Generally, an applicant in a same-sex marriage is not eligible for survivors’ benefits if the Number Holder has died in a state that does not recognize same-sex marriage. For an applicant to receive benefits based on the work record of his spouse (referred to as Number Holder), the

⁵² See 42 U.S.C. §416(h)(1)(A)(i).

⁵³ 42 U.S.C. §416(h)(1)(A)(i)(emphasis added).

⁵⁴ 42 U.S.C. §416(h)(1)(A)(i); POMS GN 00210.002 Same-Sex Marriage – Determining Marital Status for Title II and Medicare Benefits.

applicant and the Number Holder must qualify as married under the Social Security Act and state law. Under SSA's current interpretation of the Social Security Act's definition of family status found in Section 216(h), the agency would not recognize the same-sex marriage because the state where the Number Holder has died does not recognize same-sex marriage.⁵⁵

What is the duration-of-marriage requirement for same-sex couples?

The duration-of-marriage requirement for spousal benefits is one continuous year before the day on which the application is filed.⁵⁶ For widow(er)'s benefits, the duration requirement is nine months immediately prior to the day in which the Number Holder died (certain exceptions apply).⁵⁷ SSA considers the date the couple was married in determining the duration of the marriage; it does not rely on the date of the *Windsor* decision.

Is a stepchild eligible for child's benefits on a Number Holder's record if the Number Holder's relationship to the child is based on a same-sex marriage?

Generally, biological or adoptive children of Number Holders are considered children for purposes of entitlement to child's benefits under the Social Security Act.⁵⁸ Stepchildren are typically entitled to benefits on a Number Holder's record if their relationship to the Number Holder was created by the Number Holder's marriage to the child's biological or adoptive parent. Stepchildren must also be dependent on the Number Holder and meet other eligibility requirements.⁵⁹

For a stepchild to qualify for benefits on a Number Holder's record based on a same-sex marriage, the Number Holder's state of domicile must recognize the same-sex marriage or nonmarital legal relationship between the Number Holder and the child's biological or adoptive parent.⁶⁰ However, due to variation in state laws, SSA may need to obtain a legal opinion on a case-by-case basis to process some child claims in which entitlement depends on a same-sex marriage.

How does the SSA determine where a claimant lives, i.e. his "domicile"?

The SSA determines the state in which a claimant lives by looking at the person's "true and fixed home...to which a person intends to return whenever he or she is absent."⁶¹ The state of the claimant's domicile determines which state law to apply when determining "family status" as part of benefits eligibility. For a claimant to change his domicile, the claimant must be physically

⁵⁵ *Id.*

⁵⁶ POMS GN 00210.100 Same-Sex Marriages and Nonmarital Legal Relationships – Aged Spouse and Spouse with Child-in-Care and RS 00202.001 Spouse.

⁵⁷ POMS GN 00210.400 Same-Sex Marriage – Benefits for Surviving Spouses and RS 00207.001 Widow(er)'s Benefits Definitions and Requirements.

⁵⁸ POMS GN 00306.001 Determining Status as Child.

⁵⁹ POMS GN 00306.232 Dependency Requirements – Stepchild and GN 00306.230 Stepchild Relationship Requirements.

⁶⁰ POMS GN 00210.505 Same-Sex Marriage – Child's Benefits.

⁶¹ 20 C.F.R. §404.303.

present in the new place and intend to make a home in that new place permanently or for an indefinite period.⁶²

Is marital status relevant to a claim for retirement or disability benefits filed by a Number Holder in a same-sex marriage?

No, marital status is not relevant to a claim for retirement or disability benefits filed by a Number Holder in a same-sex marriage because the entitlement to these benefits is based on the Number Holder's own record of work history and contributions to Social Security and not based on marital status.⁶³

Different Types of Legal Relationships

Does an applicant qualify for spousal benefits if he is/was in a civil union?

A civil union is a nonreligious partnership, with certain rights and benefits granted to the partners, depending on the laws of the state. Some states grant same-sex couples in a civil union the same rights as married couples, including the right to inherit property after the death of one partner.⁶⁴ Section 216(h) of the Social Security Act permits the agency to recognize an applicant, who is in a civil union with the Number Holder, as the Number Holder's spouse if the state of the Number Holder's domicile would allow the applicant to inherit under intestate law.⁶⁵ Therefore, if the state's civil union laws grant inheritance rights to same-sex couples in a civil union, then SSA will generally treat the couple's civil union as a marital relationship.⁶⁶

When considering these types of relationships, SSA first determines whether the nonmarital legal relationship was valid in the place it was established and whether the relationship qualifies as a marital relationship under the laws of the state of the Number Holder's domicile.⁶⁷ SSA determines whether a nonmarital legal relationship qualifies as a marital relationship using the intestate laws of the Number Holder's domicile. If under such a state's intestate laws, an applicant could inherit a spouse's share of the Number Holder's personal property if the Number Holder died without a will, then SSA will consider the same-sex couple's relationship as a marital relationship for the purposes of determining entitlement to Social Security benefits.⁶⁸ If the Number Holder's domicile-state at the time of application does not recognize the nonmarital legal relationship for same-sex couples or does not grant that type of relationship with the rights to inherit under intestate law, then SSA would not consider that marriage as valid for the purposes of determining entitlement to benefits.⁶⁹

⁶² POMS GN 00305.001 Determining Family Status.

⁶³ POMS GN 00210.002 Same-Sex Marriage – Determining Marital Status for Title II and Medicare Benefits.

⁶⁴ See state-specific information on nonmarital legal relationships in **Table 2**. For the latest information, see POMS GN 00210.004 Nonmarital Legal Relationships.

⁶⁵ 42 U.S.C. §416(h)(1)(A)(ii).

⁶⁶ POMS GN 00210.004 Nonmarital Legal Relationships.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

For example, Colorado’s “Civil Union Act” grants parties to a civil union the rights and benefits granted to spouses in a legal marriage.⁷⁰ These rights include those relating to the acquisition, ownership, or transfer of real or personal property at death.⁷¹ Because Colorado’s civil union law allows same-sex couples in a civil union to inherit as each other’s spouse, SSA would treat such a couple as spouses for the purposes of determining their entitlement to spousal benefits.⁷²

Does an applicant qualify for spousal benefits if he is/was in a domestic partnership?

A domestic partnership is generally a relationship between two individuals who share a common domestic life but are not married.⁷³ Often a domestic partnership is established when both individuals file a legal declaration with the appropriate state government office.⁷⁴ Some states grant same-sex couples in a domestic partnership the same rights as married couples, including the right to inherit property after the death of one partner.⁷⁵ Section 216(h) of the Social Security Act permits the agency to recognize an applicant who is in a domestic partnership with the Number Holder as the Number Holder’s spouse if the state of the Number Holder’s domicile would allow the applicant to inherit under intestate law.⁷⁶ Therefore, if the state’s domestic partnership laws grant inheritance rights to same-sex couples in a domestic partnership, then the SSA will generally treat the couple’s domestic partnership as a marital relationship.⁷⁷

When considering these types of relationships, SSA first determines whether the nonmarital legal relationship was valid in the place it was established and whether the relationship qualifies as a marital relationship under the laws of the state of the Number Holder’s domicile.⁷⁸ SSA determines whether a nonmarital legal relationship qualifies as a marital relationship using the intestate laws of the Number Holder’s domicile. If under such a state’s intestate laws, an applicant could inherit a spouse’s share of the Number Holder’s personal property if the Number Holder died without a will, then SSA will consider the same-sex couple’s relationship as a marital relationship for the purposes of determining entitlement to Social Security benefits.⁷⁹ If the Number Holder’s domicile state at the time of application does not recognize the nonmarital legal relationship for same-sex couples or does not grant that type of relationship with the rights to inherit under intestate law, then SSA would not consider that marriage as valid for the purposes of determining entitlement to spousal benefits.⁸⁰

⁷⁰ COLO. REV. STAT. §14-15-107 (2013).

⁷¹ *Id.*

⁷² POMS GN 00210.004 Nonmarital Legal Relationships (as long as civil union entered into after the effective date of May 1, 2013).

⁷³ The legal definition of a domestic partnership varies among different state laws.

⁷⁴ *See, e.g.,* CAL.FAM.CODE. §297(b).

⁷⁵ See state-specific information on nonmarital legal relationships in **Table 2**. For the latest information, see POMS GN 00210.004 Nonmarital Legal Relationships.

⁷⁶ 42 U.S.C. §416(h)(1)(A)(ii).

⁷⁷ POMS GN 00210.004 Nonmarital Legal Relationships.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

For example, under Washington state law, a state-registered domestic partner can inherit the decedent partner's estate in the absence of a will.⁸¹ Due to these inheritance rights, a Washington state-registered domestic partnership would meet SSA's requirements for a marital relationship.⁸²

Marriages in Different Jurisdictions

Does SSA recognize a same-sex marriage or nonmarital legal relationship if the ceremony took place in a foreign jurisdiction?

SSA defines a foreign marriage as a "ceremonial marriage that was celebrated somewhere other than in a state."⁸³ For the purposes of determining marital status, a state is either one of the 50 United States, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands. When determining benefits eligibility, SSA would consider an applicant married if the same-sex marriage is valid in the jurisdiction in which it was celebrated and the courts of the state of the Number Holder's domicile would recognize the foreign same-sex marriage as valid.⁸⁴ If the Number Holder is domiciled in a foreign jurisdiction, then SSA considers whether the courts in the District of Columbia would recognize the foreign same-sex marriage as valid.⁸⁵

For nonmarital legal relationships, SSA uses state intestate law to determine marital status for the purposes of Social Security benefits. Specifically, SSA considers whether the courts of the state of the Number Holder's domicile would allow the applicant to inherit as the spouse of the Number Holder, if the Number Holder were to die without leaving a will.⁸⁶ If the Number Holder is domiciled in a foreign jurisdiction, then SSA considers whether the courts in the District of Columbia would permit the applicant to inherit as the spouse of the Number Holder, if the Number Holder were to die without leaving a will.⁸⁷ In both cases, the nonmarital legal relationship must be valid in the foreign jurisdiction where it was celebrated or established.

Does SSA consider marriages valid if they were conducted in a state other than the domicile-state?

SSA may consider a same-sex marriage as valid if the domicile state recognizes same-sex marriages from other states and the marriage were celebrated during the period in which that state recognized same-sex marriages.⁸⁸

⁸¹ WASH. REV. CODE §11.04.015 (2010).

⁸² POMS GN 00210.004 Nonmarital Legal Relationships.

⁸³ POMS GN 00210.006 Same-Sex Marriages Celebrated in Foreign Jurisdictions.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ POMS GN 00210.006 Same-Sex Marriages Celebrated in Foreign Jurisdictions.

⁸⁷ *Id.*

⁸⁸ POMS GN 00210.003 Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriages.

Changes in the Law

Does SSA consider same-sex marriages as valid that were celebrated in a state before the state permitted same-sex marriage?

For the purposes of Social Security, SSA does not recognize same-sex marriages that were celebrated outside of the period that the laws of the state permitted same-sex marriage.⁸⁹ Even if the applicant filed for the claim at the time when the state of domicile permitted same-sex marriage, SSA has determined that the Number Holder and the applicant cannot be recognized as married for these purposes if the ceremony occurred before the state recognized same-sex marriage.

Similarly, SSA does not recognize a same-sex couple as married, for the purposes of determining entitlement to Social Security benefits, if the Number Holder died before the state in which the Number Holder and applicant were domiciled at the time of death recognized same-sex marriages.⁹⁰

What happens to a Social Security application of a same-sex applicant if a state changes its marital laws during the application process for spousal benefits?

When processing an application for Social Security benefits, SSA looks to the current laws of the state when the application is open.⁹¹ This is state in which Number Holder was domiciled at the time of the spouse files the application. An application remains open during the appeals process. The application is closed after the administrative law judge has made a final determination.

How does a court overturning a state marriage ban affect the Social Security application of a same-sex applicant?

Section 216(h)(1)(A) of the Social Security Act directs SSA to determine marital status based on whether the “courts of the State in which such insured individual is domiciled ... would find that such applicant and such insured individual were validly married at the time such applicant files such application.”⁹² Therefore, subsequent to a court overturning a same-sex marriage ban, SSA may consider the couple validly married, if a same-sex couple married in that state and then filed for Social Security benefits while domiciled in that state.

⁸⁹ POMS GN 00210.002 Same-Sex Marriage – Determining Marital Status for Title II and Medicare Benefits.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 42 U.S.C. §416(h)(1)(A)(i).

The Application Process

What happens to an application for which marital status is relevant and SSA does not recognize the same-sex marriage as valid?

SSA will not approve applications for Social Security benefits if the applicant is in a marriage that SSA has determined cannot be recognized for purposes of determining entitlement under Title II.⁹³ SSA may hold certain applications depending on the Department of Justice’s guidance regarding the interpretation of state laws.⁹⁴

How is an SSA decision appealed?

If dissatisfied with the initial determination or decision, an applicant may request further review through SSA’s administrative review process.⁹⁵ The applicant, or appointed representative, must request a review within 60 days from the date the applicant received notice of the decision. At the first step of the review process, an applicant may ask for a reconsideration of the initial determination by SSA about the applicant’s entitlement to benefits.⁹⁶ After such reconsideration, the applicant may request a hearing before an administrative law judge.⁹⁷ The applicant may appeal a decision by an administrative law judge to the Appeals Council.⁹⁸ After this review process, SSA would have made a final decision. Only with this final decision can the applicant file an action in a federal court for judicial review of SSA’s final decision.⁹⁹ A federal court would conduct the review using the “substantial evidence” standard, which includes such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹⁰⁰

Miscellaneous

Have determinations of family status always relied on the place-of-domicile rule?

Yes, the place-of-domicile rule has been used since the creation of family benefits under the Social Security Amendments of 1939 (P.L. 76-379). As part of the legislation, Congress added language to the Social Security Act specifying that determinations of family status would be made according to the law of the state where the Number Holder was located or died using the state’s law on devolution of intestate personal property. Specifically, Congress established Section 209(m), which stated,

⁹³ POMS GN 00210.002 Same-Sex Marriage – Determining Marital Status for Title II and Medicare Benefits.

⁹⁴ POMS GN 00210.005 Same-Sex Marriage or Nonmarital Legal Relationship – Holding Certain Claims, Appeals, Post-Eligibility Actions, and Post-Entitlement Actions.

⁹⁵ Social Security Administration, *The Appeals Process*, <http://www.ssa.gov/pubs/EN-05-10041.pdf>.

⁹⁶ 20 C.F.R. §404.900(a)(2).

⁹⁷ 20 C.F.R. §404.900(a)(3).

⁹⁸ 20 C.F.R. §404.900(a)(4).

⁹⁹ 20 C.F.R. §404.900(a)(5).

¹⁰⁰ 20 C.F.R. §405.1.

In determining whether an applicant is the wife, widow, child, or parent of a fully insured or currently insured individual for purposes of this title, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a wife, widow, child, or parent shall be deemed such.

None of the reports accompanying the 1939 amendments gave any indication of why this provision was enacted.¹⁰¹ Congress later moved the text of Section 209(m) to Section 216(h) of the Social Security Act under the Social Security Act Amendments of 1950 (P.L. 81-734). The reports accompanying these amendments did not comment on the changes. Although it made subsequent changes to the formatting and language of Section 216(h), Congress maintained the basic principle of the place-of-domicile rule.

¹⁰¹ See Social Security Administration, *Legislative Histories 1935-2004*, accessed February 18, 2015, <http://www.ssa.gov/history/legislativehistory.html>. Researchers at the time were also unable to determine Congress's rationale for using state intestate law. For more information, see Michael Fooner and Robert Francis, "Relationship as a Problem in Old-Age and Survivors Insurance," *Social Security Bulletin*, vol. 4, no. 8 (August 1941), <http://www.ssa.gov/policy/docs/ssb/v4n8/index.html>.

Appendix. Social Security Benefits for Family Members

Benefits payable to family members are equal to a specified percentage of the worker’s PIA, subject to a maximum family benefit; other benefit adjustments may apply. **Table A-1** provides a summary of Social Security benefits payable to family members, including the basic eligibility requirements and the basic benefit amount before any applicable adjustments.

Table A-1. Social Security Benefits for the Worker’s Family Members

Basis for Entitlement	Basic Eligibility Requirements	Basic Benefit Amount Before Any Applicable Adjustments
Spouse	<p>At least age 62, or</p> <p>Any age if caring for the child of a retired or disabled worker. The child must be under the age of 16 or disabled, and the child must be entitled to benefits.</p> <p>The worker on whose record benefits are based must have claimed benefits.</p>	50% of worker’s PIA
<p>Divorced Spouse</p> <p>(The divorced individual must have been married to the worker for at least 10 years before the divorce became final.)</p>	<p>At least age 62</p> <p>Must be unmarried</p> <p>A divorced spouse may receive benefits based on the worker’s record if the worker is <i>eligible for</i> (not necessarily receiving) benefits and the divorce has been final for at least 2 years. If divorced fewer than 2 years, the worker on whose record benefits are based must be <i>receiving</i> benefits.</p> <p>Note: A divorced spouse who is under the age of 62 is not eligible for spousal benefits even if he/she is caring for the child of a retired or disabled worker.</p>	50% of worker’s PIA
<p>Aged Widow(er) and Divorced Aged Widow(er)</p> <p>(The divorced individual must have been married to the worker for at least 10 years before the divorce became final.)</p>	<p>At least age 60</p> <p>Must be unmarried (unless the marriage occurred after attainment of age 60)</p>	100% of worker’s PIA

Basis for Entitlement	Basic Eligibility Requirements	Basic Benefit Amount Before Any Applicable Adjustments
<p>Disabled Widow(er) and Divorced Disabled Widow(er)</p> <p>(The divorced individual must have been married to the worker for at least 10 years before the divorce became final.)</p>	<p>At least age 50 (ages 50-59)</p> <p>Must be unmarried (unless the marriage occurred after attainment of age 50)</p> <p>The qualifying disability must have occurred</p> <p>(1) before or within seven years of the worker's death;</p> <p>(2) within seven years of having been previously entitled to benefits on the worker's record as a widow(er) with a child in his/her care; or</p> <p>(3) within seven years of having been previously entitled to benefits as a disabled widow(er) that ended because the qualifying disability ended (whichever is later).</p>	<p>71.5% of worker's PIA</p> <p>Disabled widow(er)s and divorced disabled widow(er)s ages 50-59 receive the same rate of reduction set for widow(er)s at age 60 (28.5% of the worker's PIA), regardless of their age at the time of entitlement.</p>
<p>Widowed Mother or Father (Young Widow(er) with Child)</p>	<p>Surviving spouse of any age who is caring for the deceased worker's child. The child must be under the age of 16 or disabled, and the child must be entitled to benefits.</p> <p>Must be unmarried</p> <p>Must not be entitled to widow(er)'s benefits</p> <p>Note: In the case of a surviving divorced parent, the child must be his/her natural or legally adopted child. The 10-year marriage requirement that applies to divorced spouses under other circumstances does not apply.</p>	<p>75% of deceased worker's PIA</p>
<p>Child</p>	<p>A dependent, unmarried child of a retired, disabled, or deceased worker.</p> <p>The child must be</p> <p>(1) under the age of 18;</p> <p>(2) a full-time elementary or secondary student under the age of 19; or</p> <p>(3) a disabled person aged 18 or older whose disability began before age 22.</p> <p>The term child refers to a biological child, adopted child, stepchild, or in some cases grandchild, of the worker.</p>	<p>50% of worker's PIA for child of a retired or disabled worker</p> <p>75% of deceased worker's PIA for child of a deceased worker</p>

Basis for Entitlement	Basic Eligibility Requirements	Basic Benefit Amount Before Any Applicable Adjustments
Dependent Parent of a Deceased Worker	At least age 62 Must not have married since the worker's death Must have been receiving at least one-half of his/her support from the worker at the time of the worker's death (or, if the worker had a period of disability that continued until death, at the beginning of the period of disability).	82.5% of deceased worker's PIA if one parent is entitled to benefits 75% of deceased worker's PIA (for each parent) if two parents are entitled to benefits

Source: Congressional Research Service (CRS).

Notes: The family relationship requirement for entitlement to benefits based on the worker's record may be met in alternative ways. For example, the relationship requirement can be met if, under state law as interpreted by the courts of the state, the applicant would be able to inherit a share of the worker's personal property if the worker were to die without leaving a will. The table shows the minimum eligibility age for each type of benefit (i.e., the age at which benefits are first payable on a reduced basis). The maximum family benefit may apply, reducing the benefit payable to each family member (excluding the worker) on a proportional basis. In the case of a retired or deceased worker, the maximum family benefit varies from 150% to 188% of the worker's PIA. In the case of a disabled worker, the maximum family benefit is equal to the lesser of 85% of the worker's AIME or 150% of the worker's PIA, but no less than 100% of the worker's PIA. Other benefit adjustments may apply.

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