

# Social Security and Same-Sex Marriage: Post *Obergefell v. Hodges*

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## Summary

This report addresses eligibility for Social Security spousal benefits for individuals in a same-sex marriage.

### Key Takeaways

- Under the Social Security Act, eligibility for spousal benefits depends on the applicant's marital status as defined by the laws of the state as interpreted by the courts of that state in which the Number Holder, the person on whose work record the benefit is based, is domiciled.
- Section 3 of the Defense of Marriage Act (DOMA) had required that marriage be defined as the union of one man and one woman for the purpose of federal enactments, rendering individuals in a same-sex marriage ineligible for spousal Social Security benefits. 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. 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.
- However, until *Obergefell v. Hodges*, the legality of some same-sex marriages remained in flux as state legislatures and courts changed and interpreted state marriage laws. Because the Social Security Act determines marital status by considering the laws of the state in which the Number Holder is domiciled, the Social Security Administration could only process spousal benefits for some same-sex couples whose domicile state would recognize their marriage, even if they were married legally in another state.
- In *Obergefell v. Hodges* (June 26, 2015), the U.S. Supreme Court held that the Fourteenth Amendment requires a state to permit a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state. Thus, because same-sex couples may now marry in all states, individuals in a same-sex marriage are eligible for spousal Social Security benefits, if they have met other statutory requirements.
- With respect to policy guidance concerning the processing of applications for applicants in same-sex marriages who may have been ineligible for benefits before *Obergefell*, SSA has stated that it is working with the Department of Justice to analyze the *Obergefell* decision in order to provide instructions for processing claims. The agency has indicated that new information regarding implementation of the *Obergefell* decision will be posted to its website as it becomes available.

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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.<sup>1</sup> Section 3 had required that marriage be defined as the union of one man and one woman for the purpose of federal enactments, rendering individuals in a same-sex marriage ineligible for spousal Social Security benefits.<sup>2</sup> After the *Windsor* decision, the Social Security Administration (SSA) started processing Old-Age, Survivors, and Disability Insurance (OASDI) applications for some claimants in a same-sex marriage. Under the Social Security Act, eligibility for spousal benefits depends on the applicant's marital status as defined by the state in which the Number Holder is domiciled. ("Number Holder" simply refers to the person on whose work record benefits are based.) However, until *Obergefell v. Hodges*, the legality of some same-sex marriages remained in flux as state legislatures and courts changed and interpreted state marriage laws. Because the Social Security Act determines marital status by considering the laws of the state in which the Number Holder is domiciled, SSA could only process spousal benefits for some same-sex couples whose domicile state would recognize their marriage, even if they were married legally in another state. In *Obergefell*, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to permit a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.<sup>3</sup> Thus, because same-sex couples may now marry in all states, individuals in a same-sex marriage are eligible for spousal Social Security benefits, if they have met other statutory requirements.

This report addresses eligibility for Social Security spousal benefits for individuals in a same-sex marriage. The report begins with an overview of the Social Security program, followed by a discussion of the marital requirements regarding eligibility for Social Security spousal benefits. The report concludes by analyzing how the recent Supreme Court cases have impacted Social Security eligibility for same-sex couples.

## Overview of Social Security

Social Security is a federally administered, work-related entitlement program<sup>4</sup> authorized by Title II of the Social Security Act.<sup>5</sup> The program is financed primarily by payroll taxes paid by individuals who work in Social Security-covered employment and their employers.<sup>6</sup> 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.<sup>7</sup> The program is also credited with federal income taxes that some beneficiaries

<sup>1</sup> U.S. v. Windsor, 133 S.Ct. 2675 (2013).

<sup>2</sup> P.L. 104-199.

<sup>3</sup> Obergefell v. Hodges, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 2473451 (U.S. June 26, 2015).

<sup>4</sup> 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*.

<sup>5</sup> 42 U.S.C. §§401-434.

<sup>6</sup> An estimated 167.5 million workers (94% of workers) are covered by Social Security. Social Security Administration (SSA), *2015 Social Security/SSI/Medicare Information*, March 25, 2015, at <http://www.socialsecurity.gov/legislation/2015%20Fact%20Sheet.pdf>.

<sup>7</sup> In 2016, the annual limit on taxable earnings is \$118,500. Self-employed individuals are required to pay Social (continued...)

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.<sup>8</sup>

The program provides monthly cash benefits to eligible retired or disabled workers and their family members, and to the family members of deceased workers.<sup>9</sup> To be eligible for a retired-worker benefit, a worker needs a minimum of 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 September 2015, there were nearly 60 million Social Security beneficiaries: 43 million retired workers and their family members (72%); 11 million disabled workers and their family members (18%); and 6 million survivors of deceased workers (10%).<sup>10</sup>

## A Worker's Eligibility for Benefits

A worker becomes eligible for Social Security benefits by working in Social Security-covered employment for a specified period, among other requirements.<sup>11</sup> To be eligible for a *retired-worker* benefit, a worker needs a minimum of 40 earnings credits (10 years of covered employment).<sup>12</sup> 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.<sup>13</sup> Generally, the worker must be unable

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Security payroll taxes if they have net earnings from self-employment of \$400 or more in a year. Only 92.35% of net earnings (up to the annual limit) are taxable.

<sup>8</sup> For more information, see CRS Report RL33028, *Social Security: The Trust Funds*.

<sup>9</sup> 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 SSA, *Social Security: How Work Affects Your Benefits*, Publication No. 05-10069, <https://www.socialsecurity.gov/pubs/EN-05-10069.pdf>.

<sup>10</sup> SSA, *Monthly Statistical Snapshot, September 2015*. See the latest edition of the *Monthly Statistical Snapshot* at [http://www.socialsecurity.gov/policy/docs/quickfacts/stat\\_snapshot/index.html](http://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/index.html). For more information on the Social Security program, see CRS Report R42035, *Social Security Primer*.

<sup>11</sup> Section 202 of the Social Security Act (*Old-Age and Survivors Insurance [OASI] Benefit Payments*) specifies the eligibility requirements for benefits payable to retired workers and to auxiliaries of retired, disabled, or deceased workers. Specifically, Section 202 provides for the following types of benefits: old-age insurance benefits, 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](http://ssa.gov/OP_Home/ssact/title02/0202). Section 223 of the Social Security Act (*Disability Insurance [DI] Benefit Payments*) specifies the eligibility requirements for benefits payable to disabled workers, as well as the disability requirements for disabled auxiliaries of retired, disabled, or deceased workers. Section 223 of the Social Security Act is available at [http://ssa.gov/OP\\_Home/ssact/title02/0223.htm](http://ssa.gov/OP_Home/ssact/title02/0223.htm).

<sup>12</sup> A worker can earn up to four earnings credits (or quarters of coverage) per calendar year. In 2016, a worker earns one earnings credit for each \$1,260 in covered earnings, up to a maximum of four earnings credits with covered earnings of \$5,040 or more.

<sup>13</sup> In 2016, SSA defines SGA as average monthly earnings above \$1,130 for most individuals and \$1,820 for statutorily blind individuals.

to do any kind of substantial work that exists in the national economy, taking into account age, education, and work experience.<sup>14</sup>

A worker is eligible to receive a retirement benefit as early as age 62.<sup>15</sup> 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 period of expected benefit receipt. The FRA ranges from age 65 to age 67, depending on the worker's year of birth.<sup>16</sup>

As of September 2015, retired workers accounted for 67% of the beneficiary population, and disabled workers accounted for 15% of all beneficiaries.<sup>17</sup>

## **Amount of Benefits Received**

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;<sup>18</sup> (2) the highest 35 years of indexed earnings are summed to get the total earnings;<sup>19</sup> (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).<sup>20</sup>

The monthly benefit that is payable to a worker may be less than or greater than his or her PIA, depending on 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 period of expected benefit receipt (based on average life expectancy).<sup>21</sup> 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 period of expected benefit receipt.<sup>22</sup> In addition to benefit adjustments based on a worker's age at the time of entitlement, benefits may be adjusted for other

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<sup>14</sup> For more information, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*.

<sup>15</sup> 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.

<sup>16</sup> 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*.

<sup>17</sup> SSA, *Monthly Statistical Snapshot, September 2015*.

<sup>18</sup> Annual earnings through age 60 are indexed to wage growth; earnings after age 60 are counted at nominal value.

<sup>19</sup> 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*.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> If a worker claims retirement benefits after the full retirement age, the benefit payable is greater than his or her PIA.

reasons. For example, under the *retirement earnings test*, benefits are temporarily reduced if a beneficiary is below the FRA and has earnings above specified thresholds.<sup>23</sup>

As of September 2015, the average monthly benefit was \$1,338 among retired workers and \$1,165 among disabled workers.<sup>24</sup>

## Family Member Eligibility 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 the child is entitled to benefits.<sup>25</sup> **Table A-1** in the **Appendix** to this report provides a summary of Social Security benefits payable to family members based on the worker's record, including the basic eligibility requirements and benefit amounts for each type of benefit.

If a person becomes simultaneously entitled to benefits based on his or her own work record and the work record of another person as an eligible family member, the person does not receive both benefits in full. Rather, under the *dual entitlement rule*, the person receives (1) his or her own benefit, plus (2) the benefit based on another person's work record (the auxiliary benefit) after it has been reduced by the amount of the person's own benefit (in some cases, the auxiliary benefit may be reduced to zero). In effect, the person receives the higher of the two benefit amounts. Other adjustments to auxiliary benefits may apply. For example, auxiliary benefits are reduced if total benefits payable based on the worker's record exceed the *maximum family benefit*.<sup>26</sup>

As of September 2015, dependents and survivors of retired, disabled, or deceased workers accounted for 18% of the beneficiary population.<sup>27</sup>

## Social Security Act's Determination of 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.<sup>28</sup> 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. (As noted previously, 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.<sup>29</sup> While state law does not affect a person's entitlement to benefits as a retired or disabled

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<sup>23</sup> SSA, *Exempt Amounts Under the Earnings Test*, <https://www.socialsecurity.gov/OACT/COLA/rtea.html>. The FRA is also referred to as the normal retirement age (NRA).

<sup>24</sup> SSA, *Monthly Statistical Snapshot, September 2015*.

<sup>25</sup> 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.

<sup>26</sup> SSA, *Formula for Family Maximum Benefit*, <https://www.socialsecurity.gov/OACT/COLA/familymax.html>.

<sup>27</sup> SSA, *Monthly Statistical Snapshot, September 2015*.

<sup>28</sup> 42 U.S.C. §416(a)-(g).

<sup>29</sup> In this CRS report, the discussion focuses primarily on spouses and surviving spouses.



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.<sup>30</sup> 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.”<sup>31</sup> 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,<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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 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.<sup>36</sup>

## Social Security and Same-Sex Marriage

Same-sex couples were not always eligible for Social Security spousal benefits, as Section 3 of the Defense of Marriage Act (DOMA) had required that marriage be defined as the union of one man and one woman for the purpose of federal enactments. Under the Social Security Act as discussed above, SSA looks to the laws of the state in which the Number Holder is domiciled to determine whether the applicant and Number Holder are married for the purposes of spousal benefit eligibility. Changes in the state laws and the Supreme Court decisions in *U.S. v. Windsor* and *Obergefell v. Hodges* have impacted SSA's processing of spousal benefit claims for applicants in a same-sex relationship. The following sections analyze the changes in Social Security

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<sup>30</sup> 42 U.S.C. §416(h)(1)(A).

<sup>31</sup> 20 C.F.R. §404.303.

<sup>32</sup> Intestate law determines the inheritance of property when a person dies without leaving a valid will.

<sup>33</sup> 20 C.F.R. §404.345 (available at [http://www.ssa.gov/OP\\_Home/cfr20/404/404-0345.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-0345.htm)).

<sup>34</sup> Uniform Probate Code §2-102.

<sup>35</sup> 42 U.S.C. §416(h)(1)(B).

<sup>36</sup> 20 C.F.R. §404.346 (available at [http://www.ssa.gov/OP\\_Home/cfr20/404/404-0346.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-0346.htm)).



eligibility for individuals in same-sex marriages by tracking the recent Supreme Court cases and their impact on state marital laws.

## **Social Security Eligibility After *United States v. Windsor***

On June 26, 2013, in *United States v. Windsor*, the Supreme Court held that Section 3 of the Defense of Marriage Act (DOMA)<sup>37</sup> is unconstitutional, finding, in part, that it violated the Constitution's equal protection and substantive due process guarantees.<sup>38</sup> 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 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.<sup>39</sup>

In response to the *Windsor* decision, SSA started processing Social Security (OASDI) applications for some claimants in same-sex marriages. Because eligibility for *spousal* Social Security benefits depends on the applicant meeting the relationship requirement to the Number Holder, as outlined in 216(h),<sup>40</sup> some but not all applicants in a same-sex marriage were eligible for these benefits during the period between the *Windsor* and *Obergefell* decisions. As discussed in the previous section, the Social Security Act's Section 216(h) states that when 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.<sup>41</sup> Thus, in order for SSA to have recognized a same-sex couple as married during this period of time, the couple must have had a valid marriage and the Number Holder must have been domiciled in a state that recognized such marriage at the time of the application. For example, an applicant in a same-sex marriage was eligible for spousal benefits if the couple married and lived in a state that recognized same-sex marriage. However, an applicant in a same-sex marriage was not eligible for spousal benefits if the couple legally married in one state and then, at the time the applicant filed the application, the Number Holder moved to another state that did not recognize same-sex marriage.

For applicants in a same-sex domestic partnership<sup>42</sup> or civil union,<sup>43</sup> SSA generally determined eligibility for spousal benefits by looking at whether the domicile state would grant inheritance rights to the applicant. When considering these types of relationships, SSA first determined whether the nonmarital legal relationship was valid in the place it was established and whether the relationship qualified as a marital relationship under the laws of the state of the Number Holder's domicile.<sup>44</sup> SSA determined whether a nonmarital legal relationship qualified as a

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<sup>37</sup> P.L. 104-199.

<sup>38</sup> *U.S. v. Windsor*, 133 S.Ct. 2675 (2013).

<sup>39</sup> 28 U.S.C. §1738C.

<sup>40</sup> 42 U.S.C. §416(h).

<sup>41</sup> 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").

<sup>42</sup> A domestic partnership is generally a relationship between two individuals who share a common domestic life but are not married.

<sup>43</sup> A civil union is a nonreligious partnership, with certain rights and benefits granted to the partners, depending on the laws of the state.

<sup>44</sup> POMS GN 00210.004 Nonmarital Legal Relationships.

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 would have considered the same-sex couple's relationship as a marital relationship for the purposes of determining entitlement to Social Security benefits.<sup>45</sup> If the Number Holder's domicile-state at the time of application did 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 have considered that marriage as valid for the purposes of determining entitlement to benefits.<sup>46</sup>

## **Social Security Eligibility After *Obergefell v. Hodges***

On June 26, 2015, in a 5-4 decision, the Supreme Court struck down state same-sex marriage bans in *Obergefell v. Hodges*.<sup>47</sup> The Court held that the fundamental right to marry includes the right of same-sex couples to marry under the Fourteenth Amendment's due process and equal protection guarantees. Under the Court's decision, all states must both permit same-sex couples to marry in their respective states and recognize same-sex marriages that were celebrated in other states.<sup>48</sup>

Because eligibility for Social Security spousal benefits depends on whether the state would recognize the applicant's marriage to the Number Holder at the time of the application, individuals in a same-sex marriage are now eligible for spousal Social Security benefits, if they have met other statutory requirements.

## **SSA's Response to *Obergefell***

Following the *Obergefell* decision, SSA noted that "more same-sex couples will be recognized as married for purposes of determining entitlement to Social Security benefits." With respect to policy guidance concerning the processing of applications for same-sex couples who may have been ineligible for benefits before *Obergefell*, SSA further stated: "We are working with the Department of Justice to analyze the [*Obergefell*] decision and provide instructions for processing claims." The agency indicates that new information regarding implementation of the *Obergefell* decision will be posted to its website as it becomes available.<sup>49</sup>

The following table shows the dates when states and U.S. territories permitted or recognized same-sex marriage. The dates are considered, for example, when establishing whether a same-sex marriage is valid and the duration-of-marriage requirement is met for purposes of determining entitlement to Social Security benefits. In some cases, the specified dates are consistent with the recent Supreme Court decisions affecting Social Security eligibility for same-sex couples: *United States v. Windsor* (June 26, 2013) and *Obergefell v. Hodges* (June 26, 2015).

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 2473451 (U.S. June 26, 2015).

<sup>48</sup> For more information on the decision, see CRS Legal Sidebar WSLG1316, *Supreme Court Strikes Down State Same-Sex Marriage Bans*.

<sup>49</sup> SSA, "Important Information for Same-Sex Couples," <http://www.ssa.gov/people/same-sex-couples/>. (SSA website visited on November 4, 2015.)

**Table I. Dates That States and U.S. Territories Permitted or Recognized Same-Sex Marriage**

<b>State or Territory<sup>a</sup></b>	<b>Date Same-Sex Marriages Were Permitted in the State or Territory</b>	<b>Date Same-Sex Marriages from Other States or Territories Were Recognized<sup>b</sup></b>
Alabama	February 9, 2015	February 9, 2015
Alaska	October 17, 2014	October 17, 2014
Arizona	October 17, 2014	October 17, 2014
Arkansas	May 9, 2014-May 16, 2014 & June 26, 2015-present	June 26, 2015
California	June 16, 2008-November 4, 2008 & June 26, 2013-present	June 16, 2008-November 4, 2008 & June 26, 2013-present
Colorado	June 25, 2014-July 18, 2014 & October 6, 2014-present	June 25, 2014-July 18, 2014 & October 6, 2014-present
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
Georgia	June 26, 2015	June 26, 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
Kentucky	June 26, 2015	June 26, 2015
Louisiana	June 26, 2015	June 26, 2015
Maine	December 29, 2012	December 29, 2012
Maryland	January 1, 2013	February 23, 2010
Massachusetts	May 17, 2004	May 17, 2004
Michigan	March 21-22, 2014 & June 26, 2015-present	March 21-22, 2014 & June 26, 2015-present
Minnesota	August 1, 2013	August 1, 2013
Mississippi	June 26, 2015	June 26, 2015
Missouri	June 25, 2014	October 6, 2014
Montana	November 19, 2014	November 19, 2014
Nebraska	June 26, 2015	June 26, 2015
Nevada	October 9, 2014	October 9, 2014
New Hampshire	January 1, 2010	January 1, 2010

State or Territory <sup>a</sup>	Date Same-Sex Marriages Were Permitted in the State or Territory	Date Same-Sex Marriages from Other States or Territories Were Recognized <sup>b</sup>
New Jersey	October 21, 2013	October 21, 2013 (From February 19, 2007-October 20, 2013, same-sex marriages from other states were recognized as civil unions.)
New Mexico	August 21, 2013	January 4, 2011
New York	July 24, 2011	February 1, 2008
North Carolina	October 10, 2014	October 10, 2014
North Dakota	June 26, 2015	June 26, 2015
Ohio	June 26, 2015	June 26, 2015
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
South Dakota	June 26, 2015	June 26, 2015
Tennessee	June 26, 2015	June 26, 2015
Texas	June 26, 2015	June 26, 2015
Utah	December 20, 2013-January 6, 2014 & October 6, 2014-present	December 20, 2013-January 6, 2014 & 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 6-13, 2014 & October 6, 2014-present	June 6-13, 2014 & October 6, 2014-present
Wyoming	October 21, 2014	October 21, 2014
Guam	June 9, 2015	June 9, 2015
Northern Mariana Islands	June 26, 2015	June 26, 2015
Puerto Rico	June 26, 2015	June 26, 2015
U.S. Virgin Islands	June 26, 2015	June 26, 2015

**Source:** Social Security Administration, POMS, GN 00210.003, Same-Sex Marriage – Dates States and U.S. Territories Permitted or Recognized Same-Sex Marriage, Revised November 5, 2015, <http://policy.ssa.gov/poms.nsf/lnx/0200210003>. (SSA website visited on November 18, 2015.)

**Notes:** The recent Supreme Court cases affecting Social Security eligibility for same-sex couples are *United States v. Windsor* (June 26, 2013) and *Obergefell v. Hodges* (June 26, 2015).

- For American Samoa, information in the Social Security Administration's POMS does not specify dates; rather, it indicates that cases are referred for legal opinion.
- According to preliminary guidance released by SSA, the dates in this column are not used in certain cases when determining whether the agency can recognize a same-sex marriage for purposes of determining

entitlement to Social Security benefits. For more information, see SSA, POMS, “EM-15029: Obergefell Supreme Court Decision—When to Recognize Same-sex Marriages in Title II Survivor and Lump-sum Death Payment (LSDP) Claims - One-Time-Only Instructions,” September 10, 2015, <https://secure.ssa.gov/apps10/reference.nsf/links/09102015091928AM>.

## Appendix. Social Security Benefits Payable to Family Members Based on a Worker's Record

**Table A-1** summarizes the different types of Social Security benefits payable to eligible family members based on a worker's record, including basic eligibility requirements and basic benefit amounts before any applicable adjustments. Benefits payable to family members may be subject to adjustments for a variety of reasons. For example, if a person becomes simultaneously entitled to benefits based on his or her own work record (a worker benefit) and the work record of another person as an eligible family member (an auxiliary benefit), the auxiliary benefit is reduced by the amount of the person's own worker benefit under the *dual entitlement rule*. In effect, the person receives the higher of the two benefit amounts (not both benefits in full). In other examples, auxiliary benefits are reduced if the person becomes entitled to auxiliary benefits before attaining the FRA; total benefits payable based on the worker's record exceed the *maximum family benefit*; the auxiliary beneficiary receives a pension from work that was not covered by Social Security (under the *government pension offset*); or the auxiliary beneficiary is below the FRA and has current earnings above specified thresholds (under the *retirement earnings test*).

**Table A-1. Social Security Benefits Payable to the Worker's Family Members**

Basis for Entitlement	Basic Eligibility Requirements	Basic Benefit Amount Before Any Applicable Adjustments
Spouse	At least age 62, or 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.	50% of worker's PIA
Divorced Spouse (The divorced individual must have been married to the worker for at least 10 years before the divorce became final.)	At least age 62 Must be unmarried 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.	50% of worker's PIA
Aged Widow(er) & Divorced Aged Widow(er) (The divorced individual must have been married to the worker for at least 10 years before the divorce became final.)	At least age 60 Must be unmarried (unless the marriage occurred after attainment of age 60)	100% of worker's PIA

Basis for Entitlement	Basic Eligibility Requirements	Basic Benefit Amount Before Any Applicable Adjustments
<p>Disabled Widow(er) &amp; Divorced Disabled Widow(er) (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) Must be unmarried (unless the marriage occurred after attainment of age 50) The qualifying disability must have occurred (1) before or within seven years of the worker's death; (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 or her care; or (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 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. Must be unmarried Must not be entitled to widow(er)'s benefits Note: In the case of a surviving divorced parent, the child must be his or 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. The child must be (1) under the age of 18; (2) a full-time elementary or secondary student under the age of 19; or (3) a disabled person aged 18 or older whose disability began before age 22. 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 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	<p>At least age 62</p> <p>Must not have married since the worker's death</p> <p>Must have been receiving at least one-half of his or 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).</p>	<p>82.5% of deceased worker's PIA if one parent is entitled to benefits</p> <p>75% of deceased worker's PIA (for each parent) if two parents are entitled to benefits</p>

**Source:** Congressional Research Service.

**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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