

AFTER

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

SOCIAL SECURITY SPOUSAL AND FAMILY PROTECTIONS

Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship. Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

This guidance addresses Social Security spousal benefits: when one spouse retires; in the event of disability; and when one spouse has passed away. Access to each of these benefits was blocked or affected by the federal Defense of Marriage Act (DOMA). Now that DOMA has been declared unconstitutional by the United States Supreme Court, this guidance summarizes these benefits, who qualifies, special concerns, possible reductions to benefits, how to apply, and how to appeal if your claim is denied.

IMPORTANT ALERT: On August 9, 2013, the Acting Commissioner of the Social Security Administration (SSA) announced that SSA is now processing some retirement spousal claims for same-sex couples. <http://ssa.gov/doma> for more information from SSA regarding benefits for same-sex couples and family members.

The SSA encourages everyone who believes he or she may be eligible to apply for benefits. No matter what state you reside in, you can go to your local SSA office or to the SSA website and apply if you believe you may be entitled to benefits. Although SSA has yet to issue specific guidance on eligibility for benefits for same-sex couples nationwide, including eligibility depending on whether you live in a state that bars marriage, a state with some alternative status like the civil union, domestic partnership, or designated beneficiary, or a marriage state – SSA should still accept your application for benefits while these determinations are being made. Getting your application on file soon could be important if you are determined to be eligible, because you can receive benefits according to your date of application. Each month of delaying your application can result in the loss of one month of benefits. Check the SSA website and this fact sheet for updated information.

For more information, visit the Social Security Administration website socialsecurity.gov

What is the Social Security Retirement Spousal Benefit?

The "retirement spousal benefit" (the spousal benefit) is a benefit for a non-earning or lower-earning spouse that allows him or her to collect an amount that is equal to half of the other spouse's Social Security benefit. People are only eligible for a spousal benefit when their own benefit is less than half of their retired spouse's benefit, or when they seek to delay their own application for Social Security benefits based on their own work record. For more information, consult the SSA's [Retirement Planner: Benefits For You As A Spouse](http://socialsecurity.gov/retire2/applying6.htm).

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- t One-earner couples receive a spousal benefit of an extra 50% of the worker's retirement benefit while both spouses are alive.
- t For two earner couples who worked long enough to qualify for Social Security benefits, a lower-earning spouse can receive his or her own benefit plus a spousal benefit to bring his or her total benefit up to 50% of the higher benefit.
- t If you are at retirement age and your spouse has applied for Social

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Q. I am divorced. Can I obtain benefits based on my former marriage? What happens to those benefits if I remarry?

A. A divorced spouse of a retired, disabled or deceased worker—assuming the marriage lasted at least 10 years and that the divorced spouse is not married to someone else and meets age and other requirements—is entitled to receive benefits based on the earnings record of a former spouse. This includes the retirement spousal benefit, the disability spousal benefit, and the survivor's benefit, though some eligibility differences apply for divorced spouses. For information about access to benefits and how marrying will affect benefits from a former spouse, consult the SSA's [Retirement Planner: Benefits For Your Divorced Spouse](http://www.socialsecurity.gov/retire2/yourdivspouse.htm) www.socialsecurity.gov/retire2/yourdivspouse.htm

What Factors Could Reduce My Benefits?

Some of the most common factors that can reduce benefits are discussed below.

Early Retirement. If you start retirement benefits early, before the full retirement age set for you by Social Security, your monthly benefits are reduced. The full retirement age for people born between 1943 and 1954 is 66. [Calculate the benefits of early or later retirement on the Social Security website](http://www.socialsecurity.gov/OACT/quickcalc/early_late.htm) [socialsecurity.gov/OACT/quickcalc/early_late.htm](http://www.socialsecurity.gov/OACT/quickcalc/early_late.htm). For more information, consult the SSA's publication [Retirement Benefits: When To Start Receiving Retirement Benefits](http://www.socialsecurity.gov/pubs/10045.pdf) and [Retirement Planner: Other Things to Consider](http://www.socialsecurity.gov/retire2/yourdivspouse.htm)

Maximum Family Benefits Limit (Family Cap). If you or your spouse's children are also eligible for or receiving Social Security based on the same worker's earnings record, your spousal benefit may be subject to a cap on total family benefits under a single earnings record. For more information, consult the SSA's [Formula For Family Maximum Benefit](http://www.ssa.gov/oact/cola/familymax.html) www.ssa.gov/oact/cola/familymax.html.

Windfall Elimination Provision (WEP). Where a worker worked for an employer that did not withhold Social Security taxes from the worker's salary, such as a federal, state or local government agency, a nonprofit organization or another country, the pension based on that work may reduce the worker's Social Security benefits because of Social Security's Windfall Elimination Provision ("WEP"). Since the spousal benefit is derived from the worker's benefit, WEP affects spousal benefits as well. While benefits are lowered because of the WEP, they are never totally eliminated. For more information, consult the SSA's [WEP eliminating a monthly Social Security benefit](http://www.socialsecurity.gov/pubs/10045.pdf) http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/1354/~/wep-eliminating-a-monthly-social-security-benefit www.socialsecurity.gov/pubs/10045.pdf

Government Pension Offset (GPO). The GPO applies directly to reduce spousal benefits if you receive a pension from a federal, state, or local government based on work where you did not pay Social Security taxes. If the GPO applies to you, your Social Security benefits will be reduced by two-thirds of your government pension. For more information, consult the SSA's publication [Government Pension Offset](http://www.socialsecurity.gov/pubs/10007.pdf) www.socialsecurity.gov/pubs/10007.pdf.

What Can I Do to Protect and Preserve My Rights While the Social Security Administration Sorts Out if My Marriage or

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contact an attorney. If you improperly receive benefits, the government can require you to pay those back.

Timing. There is no deadline for applying for a spousal benefit (except the lump-sum death benefit) though benefits begin based on the date you filed an application.



FOR MORE INFORMATION, CONTACT

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

LAMBDA LEGAL

lambdalegal.org

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

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