

Spousal and Family Social Security Benefit Strategies

Social Security isn't just an individual benefit—spouses, children, and other family members may qualify for payments based on a worker's record. This course examines spousal benefit rules, including the particular financial stake older women have in optimizing these benefits, and breaks down which family members qualify for benefits and under what circumstances. CPAs and planners working with married couples or families navigating retirement and estate planning will find this course valuable for delivering well-rounded Social Security guidance.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

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LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recognize the specifics of spousal benefit eligibility.
- Recognize how Social Security benefits affect the family.

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Publication Date: March 2026

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Chapter 1: SPOUSAL BENEFITS: WATCHING OUT FOR EACH OTHER

Chapter Objective

After completing this chapter, you should be able to:

- Recognize the specifics of spousal benefit eligibility.

When you think about Social Security, you probably focus on your own retirement benefit, earned through years of working and contributing payroll taxes into the system. But if you are or ever have been married, you have more than that to consider. You also have earned (or may earn) benefits for your spouse, and your spouse may have earned (or may earn) benefits for you.

When you make decisions about filing for Social Security retirement benefits, you may not be making those decisions in isolation — your decisions may affect (or be affected by) your spouse or former spouse. Under the Bipartisan Budget Act of 2015, certain claiming strategies were restricted for married couples. But you still can maximize your retirement benefits — or leave the most for your spouse upon your death — by finding the strategy that's right for your unique situation. In this chapter, I show you how. But first, I start by telling you who qualifies for spousal benefits and who doesn't. If you're married, or you've ever been married, read on.

Tip

People sometimes confuse spousal benefits and survivor benefits, both of which may go to spouses but are different benefits based on different rules. The spousal benefit may be paid to a spouse when the breadwinner is still alive and getting retirement benefits. The survivor benefit may be paid to a spouse (or potentially other survivors) when the breadwinner dies. Important details on each appear in this chapter.

WHO QUALIFIES AND WHO DOESN'T

Spousal benefits are benefits earned by a breadwinner, based on their earnings record, not the earnings record of the spouse. Spousal benefits don't reduce the Social Security benefit that goes to the breadwinner. In fact, they can boost the income of an older household for many years — as long as the two partners remain alive.

Basically, you may be eligible for spousal benefits if all of the following apply:

- You're at least 62 years old.
- You are legally married to the breadwinner, and the marriage has lasted for at least one year.

The Social Security Administration (SSA) allows several exceptions to the one- year marriage requirement to qualify for spousal benefits. Here are two of the major exceptions:

- An individual seeking spousal benefits may qualify if married to the worker for less than one year if they are the *natural* (biological) *parent* of the worker's child. This parental exception is allowed even if the child is no longer alive.
 - An individual seeking spousal benefits may qualify if married to the worker for less than one year if they would qualify for a Social Security auxiliary benefit, such as an ex-spouse, widow, or surviving parent benefit, in the month prior to the month of marriage.
 - Say you're getting your own retirement benefit at 62, based on your own career, and then you get married. In such a case, you potentially qualify for spousal benefits through your new spouse, even if the marriage hasn't yet lasted a year. Of course, you want the spousal benefit only if it's bigger than the benefit you're already receiving.
- You don't already qualify for a larger benefit based on your own work record.
 - Your spouse (the breadwinner) has filed for their own Social Security benefits.

You may be eligible for benefits as an ex-spouse if your marriage lasted for ten years. (**Note:** Your former partner doesn't have to file for benefits in order for you to potentially be eligible as an ex-spouse. But if your former partner hasn't filed for benefits, your divorce must have been in effect for at least two years.)

As with all Social Security benefits, you may have to provide certain evidence to prove you're eligible. For spousal benefits, this evidence may include proof of marriage (including proof that the marriage lasted at least one year) and proof of age. The proof of age requirement is waived if you're caring for a child who is under 16 or who gets Social Security disability benefits. See Chapter 2 of course 81852C for more information on the evidence required when filing for benefits.

Tip

When you file for spousal benefits, the SSA already may have some of the information it requires in its records, depending on your past dealings with the agency and whether you previously established an earnings record.

The SSA follows certain guidelines — including state and federal law — on who may receive spousal benefits. You may have a different definition of what constitutes a spouse or a legal marriage, but

that won't change a decision on your claim. In the following sections, I fill you in on the details of who qualifies for spousal benefits and who doesn't.

Traditional spouses

If you have a traditional marriage (one man, one woman), the Social Security Act was written with you in mind. The spousal payment is based entirely on the earnings record of the breadwinner. It requires no earnings record on the part of the other spouse.

Same-sex spouses

In a historic turnaround, the SSA now processes spousal claims from same-sex marriages. While the agency initially placed great weight on whether a same-sex marriage was recognized as valid in the state where it took place, it has since broadened the policy and recognizes same-sex marriages if the initial claim for benefits was filed on or after June 26, 2015, or pending a final determination at that time — regardless of the state where the marriage occurred. (All U.S. states now recognize same-sex marriages as legally valid, although states reached that position on different dates.)

Technical Stuff

While all states now recognize same-sex marriage, they do not all agree on the legal definition of a marriage, a fact that potentially applies both to unions of a man and a woman, as well as unions of the same gender. The SSA wants to know whether — under the law of the state where the worker lives — the worker's partner would be allowed to inherit a legal spouse's share of the worker's property if the worker died without a will. If the answer is yes, Social Security considers the couple (same sex or heterosexual) to be married, both for claims related to Social Security and for Medicare. If the answer is no, it does not.

Technical Stuff

Social Security lifted the longtime barrier on payments to spouses in same-sex marriages after the U.S. Supreme Court tossed out Section 3 of the Defense of Marriage Act. Until then, the agency had said the 1996 law prevented it from recognizing such marriages in allocating benefits. Implementing the law for Social Security has raised various issues. As of this writing, you can find the technical rules governing Social Security policy on same-sex marriage by going to secure.ssa.gov/apps10/poms.nsf/lnx/0200210000.

Common-law spouses

Common-law marriages are unions in which neither a religious nor a civil marriage ceremony took place, but the two partners live together and consider themselves to be married. A handful of states recognize common-law marriages entered into within the state's own borders as fully legal; most

don't. The SSA goes along with the legal status of a common-law marriage in the state where you live.

Most states recognize common-law marriages that were validly entered into in one of the states that recognizes them. The following states generally recognize common-law marriage (but be aware that the list changes over time): Colorado, Iowa, Kansas, Montana, New Hampshire, Oklahoma, Rhode Island, South Carolina, Texas, and Utah. The District of Columbia also recognizes common-law marriage. Some other states recognize common-law marriage under certain circumstances.

Divorced spouses

The SSA allows spousal benefits for divorced spouses if the marriage lasted at least ten years and the former spouse who seeks benefits is unmarried. (It makes no difference to the SSA if the breadwinner on whose record the spousal benefit is based has gotten remarried.)

Benefit levels for a divorced spouse are the same as for a current spouse, but as with spousal benefits, the payment size varies according to the age at which the benefit is claimed (see the later section “How Much You Can Expect to Get”).

Technical Stuff

If a divorced spouse and a current spouse each claim the benefit when each reaches full retirement age, their spousal benefit is the same size. A spousal benefit to an ex has no effect on the size of the benefit that goes to the current spouse. In theory, a worker can have a few former spouses, all of whom qualify for spousal benefits, as long as they meet the requirements.

Certain rules affect whether a former spouse may qualify for spousal benefits on the worker's record:

- **Unlike a currently married spouse who is raising the couple's child, a former spouse isn't eligible for spousal benefits before age 62, even if they are raising the once-married couple's child.** The rules do, however, provide one break based on the former spouse's age: If they are caring for the breadwinner's child and have reached age 62, they may qualify for spousal benefits with no reduction for age.
- **Unlike a currently married spouse, a former spouse may qualify for spousal benefits even if the breadwinner hasn't filed for Social Security benefits.** In such a case, however, the breadwinner must be *eligible* for benefits, even if they haven't yet claimed them, and you must be divorced for two years.

In addition, you don't have to be in contact with your former spouse. You don't even need to know your ex-spouse's Social Security number. Just provide the SSA with as much information as you can about your former spouse, and it does the rest to figure out your spousal benefit.

Widows and widowers

To get a Social Security widow or widower's (survivor) benefit, you typically must have been married to a covered worker for at least nine months and be 60 years old. Benefits also are provided for disabled widows or widowers who have reached 50. Divorced spouses may qualify for widow's or widower's benefits if the marriage lasted ten years and they didn't remarry before age 60.

The SSA provides for certain exceptions to the requirement that the marriage lasted nine months before the worker died. These include the same exceptions to the one-year length-of-marriage rule for spousal benefits (if the spouse is the biological parent of the worker's child or if the spouse qualified for different Social Security benefits in the month prior to the month of marriage).

In addition, a widow or widower may qualify for benefits if the worker died before the marriage reached the nine-month mark, if one of the following applies:

- The breadwinner died in an accident.
- The breadwinner died in the line of duty as a member of a uniformed service.
- The breadwinner and widow or widower had been married to each other previously, and their past marriage lasted at least nine months.

The History of the Remarriage Rules

The remarriage rules are rooted in a time when policymakers assumed that wives were financially dependent on their husbands. As a result, the rules treated women and men differently. Originally, survivor and spousal benefits were allowed for wives but not for husbands. But over time, the rules changed. In 1950, Congress made clear that husbands and widows also were allowed to get spousal and survivor benefits. For either gender, the survivor benefit would stop if an individual got remarried.

Later, lawmakers voiced a different concern — that the remarriage rules were discouraging unmarried older couples from tying the knot, because they didn't want to lose their survivors' benefits from a previous union. In 1965, Congress voted to limit the remarriage penalty for survivors. Rather than face a complete loss of benefits, widows who remarry at 60 and widowers at 62 would lose 50 percent of their benefits, rather than the whole amount. Two years later, disabled widows were given the right to remarry at 50 and hold on to benefits.

But even with this liberalization, the rules still made it costly to remarry, and many older Americans acted accordingly. News accounts at the time pointed to the phenomenon of older couples choosing to “live in sin” and protect their benefits, rather than get married. In 1977, Congress and President Jimmy Carter agreed to ease the “living in sin” rule further by allowing individuals who remarry after age 60 to preserve the survivors' benefits they got from a previous marriage.

Restrictions on remarriage also affect divorced spouses. Congress has long assumed that divorced wives may face hardship. Over the years, it added spousal and survivors' benefits for former spouses who meet certain requirements. Spouses who lose benefits when they remarry may be able to get them back if the newer marriage ends because of death, divorce, or annulment. In any case, if you remarry, at age 62 you become eligible for benefits based on the earnings record of your new spouse. You may still be able to keep survivors' benefits from a former spouse, if those benefits are greater.

You may qualify for benefits as a married spouse *and* as a widow or widower. This can happen, for example, if you're eligible for widow's or widower's benefits from a deceased former spouse's earnings record, you remarry after age 60, and your new spouse files for Social Security retirement benefits. You may choose which benefit to take, but you can't take both.

Tip

When you're given the choice between two benefits, it shouldn't be hard. The SSA does the calculation for you, and if you're like most people, you'll take the larger amount.

HOW MUCH YOU CAN EXPECT TO GET

The maximum spousal benefit is 50 percent of the breadwinner's full retirement benefit. The actual amount of the spousal benefit depends on the size of the breadwinner's full retirement benefit and the age at which the spouse chooses to claim it. Suppose the breadwinner's full monthly retirement benefit is \$1,000. The spousal benefit in this example can go up to \$500, if the spouse claims it at full retirement age (67 if born 1960 or later). If the spouse has no dependent child, they may claim a spousal benefit at age 62.

The spousal benefit is permanently reduced, however, for each month the spouse claims it before reaching full retirement age. If a spouse is still caring for the couple's child who is younger than 16 or disabled, the age limit doesn't apply. In that case, a spouse may qualify for a full spousal benefit (50 percent of the breadwinner's full retirement amount) at any age, as long as the breadwinner has filed for Social Security.

Warning

Violating the child-in-care rules can cost you money. If you qualify for a spousal benefit because you're caring for a child, the SSA expects you to be doing just that. You're supposed to inform the SSA if the child spends more than a month not in your care, typically in the care of a nonresident parent. Payments are withheld — or you'll have to return them — for the number of months in which the child wasn't in your care. Note the important exceptions: If the child is with you for even one day during the month, that month counts as in your care. Also, a child is considered to still be in your care if they have gone to camp, are on vacation, or attend boarding school. You don't have to inform the SSA of such events.

When a child isn't in the picture, the reduction factors for early claiming can significantly reduce the spousal benefit. For example, a spouse whose full retirement age is 67 gets 50 percent of their partner's full retirement benefit at that age. If they receive benefits sooner, however, the reductions are made as shown in Table 9-1.