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4 Things You Need to Know About the Social Security Spousal Benefit



Here are the situations in which an individual can collect Social Security, when, how much they can collect, and how they can do it.

Most people are, of course, aware of the retirement benefits that workers can collect from [Social Security](#).

However, not everyone seems to be aware that a spouse of a retired or disabled worker, even if not eligible for [Social Security](#) on their own record, may be entitled to collect benefits based on the record of the worker spouse.

Actually, even if divorced, an individual may be able to collect on the record of the ex-spouse.

In addition, if caring for a spouse's child who is under age 16 or disabled, an individual may be able to collect as well.

Read: [Income replacement rate needs vary](#)

This article will address the situations in which an individual can collect, when they can collect, how much they can collect, and how they can do it.

#1: Spouse of worker entitled to benefits

An individual can collect spousal benefits. He or she becomes entitled to collect spousal benefits based on a working spouse's Social Security record when the following requirements (see 42 U.S.C. 402(b), 402(c)) are satisfied:

- Worker spouse is entitled to collect: This is the primary threshold enabling the other spouse to collect, meaning the worker spouse must be entitled to retirement or disability benefits. In this situation, the worker spouse must be either be receiving a Social Security benefit, or if at Full Retirement Age, have exercised "file and suspend"; AND
- Application is actually filed: The individual has filed an application for spouse's benefits. In this situation, keep in mind that if the spouse has reached the age of 62 by the end of 2015, they are still eligible to file a Restricted Application at Full Retirement Age (FRA), collect the Spousal Benefit, and file for benefits on their own record at a later date--by the age of 70 or before; AND



- Eligibility for retirement or disability benefits: The spouse cannot be entitled to a retirement or disability benefit based on a Primary Insurance Amount (PIA) which is equal to or larger than one-half of the worker's Primary Insurance Amount (PIA). This is a situation of "Deemed Filing", meaning the filer is presumed to be filing to collect the highest amount for which he or she is eligible--if collecting under their own retirement or disability benefits constitutes a greater amount, then the spousal amount is unavailable; AND
- Meets age requirement or exceptions: The spouse has either attained the age of 62 or meets one of the two exceptions to the age requirement below:
 - has in their care, a child of the worker who is under the age of 16, OR
 - has in their care, a disabled child of the worker of any age, who is entitled to benefits on the worker's Social Security record.

The spouse can be any age if caring for the worker's disabled child.

Definition of "In their care": means that the mother or father: (1) exercises parental control and responsibility for the welfare and care of a child who is either under age 16 or a mentally incompetent child age 16 or over, or (2) performs personal services for a disabled mentally competent child age 16 or over.

In addition, the worker's spouse must also meet ONE of the following conditions:

- Married at least 12 months: The spouse must have been married to the worker for at least one year just before filing an application for benefits; OR
- Natural mother or father: The spouse must be the natural mother or father of the worker's biological child; OR
- Entitled to disability benefits: The spouse was entitled or potentially entitled to spouse's, widow(er)'s, parent's, or childhood disability benefits in the month before the month of marriage to the worker; OR
- Railroad Retirement Act eligibility: The spouse was entitled or potentially entitled to a widow(er)'s, parent's or child's (over 18) annuity under the Railroad Retirement Act in the month before the month of marriage to the worker.

One is "potentially entitled" if he or she meets all the requirements for entitlement other than the filing of an application and attaining the required age.



Keep in mind that there is no “means test” for a spouse. The filing spouse need not be “dependent” upon the worker spouse and, in fact, could be independently wealthy and still collect spousal benefits.

#2: Divorced spouse entitled to benefits

As mentioned, even if divorced, a spouse can collect on a worker spouse’s benefits in certain situations. The rules regarding the eligibility of a divorced spouse to collect spousal benefits are different depending upon the length of time that the divorce has been final.

Divorced less than two years

A spouse divorced less than two years is entitled to a divorced spouse’s benefit based on the worker’s Social Security record if the following conditions (see 42 U.S.C. 402(b)(1), 402(c)(1)) are met:

- Worker spouse entitled to collect: As in the case where the spouses are still married, the worker spouse must be entitled to retirement or disability benefits. As with a married spouse, the worker ex-spouse must either be receiving a Social Security benefit or, if at Full Retirement Age, had exercised “file and suspend” AND
- Application actually filed: The spouse must actually file an application for divorced spouse’s benefits,

Not eligible for retirement or disability benefits: The spouse is not entitled to a retirement or disability benefit based on a Primary Insurance Amount that equals or exceeds one-half the worker’s Primary Insurance Amount. Again, this is a situation of “Deemed Filing”, meaning the filer is presumed to be filing to collect the highest amount for which he or she is eligible--if collecting under their own retirement or disability benefits constitutes a greater amount then the spousal amount is unavailable; AND

- Meets age requirements: The spouse must be age 62 or over; AND
- Not married: The spouse must not be married, AND
- Marriage lasted at least 10 years: The spouse was married to the worker for at least 10 years before the date the divorce became final.



Divorced greater than two years (“Independently Entitled” spouse)

The requirements are different in the case of what is referred to as an “Independently Entitled Spouse” (i.e., one who has been divorced greater than two years). In this situation, greater latitude is given to the ex-spouse as noted below.

- Worker spouse entitled to collect: The worker spouse must be entitled to collect retirement or disability benefits. Note that “entitled to collect” is the only requirement here--the worker spouse does NOT have to actually be collecting or having had executed a “file and suspend.” A divorced spouse who is age 62 or over and who has been divorced for at least two years is able to receive benefits based on the earnings of a former spouse who is eligible for retirement benefits, regardless of whether the former spouse has retired or applied for benefits. (This prevents a vengeful spouse from either not collecting benefits or going back to work to keep ex-spouse from collecting.) AND
- Meets age requirements: The spouse is age 62 or over; AND Not married: The spouse is not married; AND
- Length of marriage: The spouse must have been married to the worker for at least 10 years before the date the divorce became final.
- Waiver of two-year waiting period: As mentioned earlier, this two-year waiting period for independent entitlement to divorced spouse’s benefits is waived if the worker was entitled to benefits prior to the divorce. A spouse whose divorce took place after the couple had begun to receive retirement benefits, and whose former spouse (the worker) returned to work after the divorce (thus causing a suspension of benefits), will not lose benefits on which he or she had come to depend.

It is also important to remember that one can have two, three, or more ex-spouses collecting on their worker record. The number of ex-spouses will not affect the amount eligible as a benefit.

The limit on ex-spouses really is based on the number of 10-year marriages an individual can squeeze into one lifetime!



#3: Amount of spousal benefits

How are spousal benefits calculated?

This depends on a number of factors including when the benefits are applied for and whether they are for spousal only or if there is a young or disabled child involved.

In addition, the income level of the worker spouse can affect the level of benefits if the earnings of the worker spouse constitute what is considered to be “excess earnings.”

- Caring for underage child or disabled child: If the spouse of a retired or disabled worker is caring for the worker’s child under age 16 or disabled child, the monthly benefit equals half of the worker’s PIA, regardless of his age (see 42 U.S.C. 402(b)(2), 402(c)(2)).
- Spousal only: If the spouse is not caring for a child, monthly benefits starting at Full Retirement Age likewise equal half of the worker’s PIA; however, if the spouse chooses to start receiving benefits at or after age 62, but before Full Retirement Age, the benefit is reduced. The benefit reduction at age 62 is 30 percent and will increase by percentages monthly, reaching 100 percent at Full Retirement Age.

Note that if the spouse chooses to receive, and is paid, a reduced spouse’s benefit for months before Full Retirement Age, the spouse is not entitled to the full spouse’s benefit rate upon reaching Full Retirement Age. The reduced benefit rate is paid for as long as the spouse remains entitled to spousal benefits.

Also note that if a spouse is entitled to a retirement or disability benefit that is larger than the spouse’s benefit rate, he or she will receive only the retirement or disability benefit. The spousal benefit will constitute 50 percent of the spouse or ex-spouse’s benefit at Full Retirement Age.

The benefit collected will be the HIGHER calculated benefit amount, based on the person’s own record OR the record of the spouse. A person cannot collect both amounts.

Calculating spousal benefits

The following calculation can be used to determine spousal benefits:

1. Divide the PIA of the higher-earning spouse in half;
2. Subtract the PIA of the lower-earning spouse;
3. The remainder is the amount payable as a spousal benefit (that is presuming “Full Retirement Age”);



4. If under Full Retirement Age, then the remainder must be reduced by the Reduction Factor discussed below.

Example 1: Mike's PIA at FRA benefit level equals \$2,000. Rita is not eligible for her own benefits but wishes to collect spousal benefits.

Rita can collect as follows: Age 66 (FRA) = \$1,000; Age 62 (48 month reduction) \$700; Age 67 \$1,000; Age 70 \$1,000.

Example 2: Mike's PIA at FRA equals \$2,000. Rita begins collecting Social Security benefits at age 62. Her PIA is \$1,000. Rita collects \$750 because of reduction for early benefits. At FRA, she applies for the Spousal Benefit.

Since $\frac{1}{2}$ of Mike's PIA equals \$1,000, Rita will now collect \$1,000 as a Spousal Benefit rather than collecting her own.

Calculating Divorced Spouse Benefits

In the case of a divorced spouse, the amount of a divorced spouse's benefit is the same as a spouse's benefit amount (see 42 U.S.C. 402(b)(2), 402(c)(2)).

As a general rule, it will equal half of the beneficiary's former spouse's PIA and will be reduced if he or she elects to start receiving benefits before full retirement age.

However, a divorced spouse's benefit is paid independently of other family benefits. In other words, it will not be subject to reduction because of the family maximum limit, and will not be taken into account in figuring the maximum limit for the former spouse's family.

Also the number of ex-spouses will not affect the benefit amount.

Reduction in Spousal Benefits

As indicated above, a spouse will not always receive a spouse's full benefit. Under the following circumstances the spouse will receive a smaller amount:

- Total benefits payable exceed maximum family benefits: If the total amount of monthly benefits payable on the worker's Social Security account exceeds the Maximum Family Benefit, all benefits (except the worker's benefit) will be reduced proportionately to bring the total within the family maximum limit.
- Spouse collecting under Full Retirement Age: If a spouse who is not caring for a child elects to start receiving a spouse's benefit at age 62 (or at any time between age sixty two and Full Retirement Age), the benefit will be reduced by 25/36 of 1 percent for each of the first 36 months that the spouse is under Full Retirement Age when benefits



- Spouse entitled to retirement or disability benefit: If the spouse is entitled to a retirement or disability benefit that is smaller than the spouse's benefit rate, the spouse will receive a spouse's benefit equal to only the difference between the retirement or disability benefit and the full spouse's benefit rate. This prevents the spouse from collecting a "windfall" or more than he or she is entitled.
- Spouse entitled to government pension: The amount of a spouse's monthly benefit is usually reduced if the spouse receives a pension based on his or her own work for a federal, state, or local government that is not covered by Social Security on the last day of such employment. However, the Social Security Protection Act of 2004 generally requires that a person work in a situation covered by Social Security for five years to be exempt from this Government Pension Offset (GPO). This reduction is discussed in greater detail later in this article.

Loss of benefits due to excess earnings

A spouse can lose some or all of their monthly benefits if the worker is under the Full Retirement Age for the entire year and earnings exceed \$15,720 (see 42 U.S.C. 403(b) (1)).

A spouse may also lose benefits in the year the worker reaches Full Retirement Age if the worker earns over \$41,880, but only earnings earned before the month the worker reaches Full Retirement Age count towards the \$41,880 limit.

Similarly, if the spouse is under Full Retirement Age for the entire year and has earnings of over \$15,720 (or earnings of over \$41,880 in the year that Full Retirement Age is attained), some or all benefits can be lost.

When both the worker and the spouse have earnings in excess of the earnings limitation:

- 50 percent of the worker's "excess" earnings are charged against the total monthly family benefits if the worker is under the Full Retirement Age, and 33⅓ percent in the year the worker is to reach the Full Retirement Age, and then
- the spouse's "excess" earnings are charged against his or her own benefits in the same manner, depending upon the age of the spouse, but only to the extent that those benefits have not already been charged with the worker's excess earnings.

Example: Mr. Smith, age 62 on January 1, 2015, is entitled to a monthly retirement benefit of \$346, and his wife, also age 62 on January 1, 2015, is entitled to a monthly spouse's benefit of \$162. Mr. Smith had earnings that were \$4,064 in excess of the earnings limitation. His wife had earnings that were \$1,620 in excess of the earnings limitation. Mr. Smith's earnings are charged against the total monthly family benefit of \$508 (\$346 + \$162), so neither Mr. Smith nor his wife receives payments for January through April (50 percent of \$4,064 = \$2,032, and $4 \times \$508 = \$2,032$).



The wife's excess earnings are charged only against her own benefit of \$162. As her benefits for January through April were charged with the worker's excess earnings, the charging of her own earnings cannot begin until May; she thus receives no benefits for May through September (50 percent of \$1,620 = \$810, and $5 \times \$162 = \810).

Exception: The excess earnings of the worker do not cause deductions from the benefits of an entitled divorced spouse who has been divorced from the worker at least two years or whose former spouse was entitled to benefits before the divorce.

Loss of benefits due to government pensions

Social Security benefits payable to spouses including surviving spouses and divorced spouses are reduced (but not below zero) by two thirds of the amount of any governmental (federal, state, or local) retirement benefit payable to the spouse based on his or her own earnings in employment not covered by Social Security, if that person's last day of employment was not covered by Social Security (but see below for SSPA 2004).

Thus, for the affected group, the spouse's benefit is reduced two dollars for every three dollars of the government pension (for more information see [Social Security Publication No. 0510007](#)).

The Social Security Protection Act of 2004 (SSPA 2004) requires a person to work in covered employment for the last sixty months (instead of one day) of employment to be exempt from the Government Pension Offset (GPO). This change will not apply to someone whose last day of government service was before July 1, 2004.

Also, the required 60 months will be reduced for each month of government service that was covered by Social Security before the enactment of SSPA 2004. These reduced months of service must be performed after enactment.

This offset against Social Security benefits did not apply prior to December 1977, or if the individual: (1) met all the requirements for entitlement to Social Security benefits that existed and were applied in January 1977, and (2) received or was eligible to receive a government pension between December 1977 and December 1982. In addition, it does not apply to those first eligible to receive a government pension prior to July 1983 if they also meet the one half support test.

Generally, federal workers hired before 1984 are part of the Civil Service Retirement System (CSRS) and are not covered by Social Security. Most Federal workers hired after 1983 are covered by the Federal Employees' Retirement System Act of 1986 (FERS), which includes coverage by Social Security.



The FERS law provided that employees covered by the CSRS could from July 1, 1987 to December 31, 1987 make a onetime election to join FERS (and thereby obtain Social Security coverage). Thus, a CSRS employee who switched to FERS during this period immediately became exempt from the government pension offset.

Also, an employee who elected FERS on or before December 31, 1987 is exempt from the government pension offset, even if that person retired from government service before his FERS coverage became effective.

However, federal employees who elect to become covered under FERS during any election period which may occur on or after January 1, 1988, are exempt from the government pension offset only if they have five or more years of federal employment covered by Social Security after January 1, 1988. This rule also applies to certain legislative branch employees who first become covered under FERS on or after January 1, 1988.

Pensions based wholly on service performed as a member of a uniformed service, whether on active or inactive duty, are excluded from the offset.

When do spousal benefits end?

A spouse's benefits end when:

- the spouse dies;
- the worker dies (in this case, the spouse will be entitled to widow (er)'s, mother's, or father's benefits);
- the worker's entitlement to disability benefits ends and he or she is not entitled to retirement benefits (unless the divorced spouse meets the requirements for an independently entitled divorced spouse);
- the spouse is under age 62 and there is no longer a child of the worker under 16 or disabled who is entitled to child's benefits;
- the spouse becomes entitled to retirement or disability benefits and his or her PIA is equal to or larger than one half of the worker's PIA;
- the spouse and the worker are divorced before the spouse reaches age 62 and before the spouse and worker had been married for 10 years; or
- the divorced spouse marries someone other than the worker. However, the divorced spouse's benefit will not be terminated by marriage to an individual entitled to widow(er)'s, mother's, father's, or parent's monthly benefits, or to an individual age 18 or over who is entitled to childhood disability benefits.



A spouse is not entitled to a spouse's benefit for the month in which any of the above events occurs. The last payment will be the payment for the preceding month.

#4: A final note on same-sex marriages

On June 26, 2015, the United States Supreme Court issued a decision in *Obergefell v. Hodges*, holding that same-sex couples have a constitutional right to marry in all states.

As a direct result of this decision, it is clear that more same-sex couples will be recognized as being married for the purposes of determining their entitlement to Social Security benefits and as well as to Supplemental Security Income (SSI) payments.

This has been a changing area of law. In June 2013, the Supreme Court ruling in *United States v. Windsor*, established that same-sex couples who were married in a jurisdiction where same-sex marriages are recognized were eligible for spousal benefits, such as the spousal survivor benefit, the spousal retirement benefit, and the lump sum death benefit.

At that time, the Social Security Administration reviewed its own policies regarding same-sex marriage after the Supreme Court decision, and concluded that same-sex couples who are legally married in one state remain married for federal tax purposes even if they reside in a state that does not recognize their marriage (see Rev. Rul. 201317). In addition the SSA is now recognizing same-sex marriages that took place outside of the United States.

The Social Security Administration recommends that someone who is the spouse, divorced spouse, or surviving spouse of a same-sex marriage or other legal same-sex relationship to immediately apply for benefits. Immediate applying will preserve the filing date, which can affect benefits.

Social Security is now processing some retirement, surviving spouse, and lump-sum death payment claims for same-sex couples in non-marital legal relationships and paying benefits where they are due. In addition, the Social Security Administration considers same-sex marriage when determining SSI eligibility and benefit amounts.

Both the SSA and HHS have begun taking applications for benefits from same-sex couples and paying benefits to these couples.



Important Disclosures

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