Same-Sex Couples and Social Security

Should I read this?
Yes, if both these are true:

- You are or were married OR in a registered domestic partnership with someone of the same sex.
- You live in Washington.

"Spouse" here also means someone in a registered domestic partnership.

You may be eligible for the Social Security benefits sometimes due a spouse, including

- Spousal retirement benefits
- Spousal disability benefits
- Lump-sum death benefits.
- Survivor benefits

Your child might also be eligible for benefits.

To apply for benefits, contact Social Security. Some Social Security workers may not be aware that, for instance, individuals in same sex registered domestic partnerships (no marriage certificate) are eligible for Social Security benefits from their spouse or partner’s work record. Go ahead and apply even if the Social Security worker says you are not eligible. Get help from a lawyer.

This might affect your eligibility.
You must tell Social Security about your marriage. Example: You get SSI. Getting married could affect your SSI eligibility or payment amount.

What are spousal Social Security retirement benefits?
Social Security bases these benefits on your spouse’s earnings record only. You apply with Social Security to claim these if you and your spouse are both living. If you meet age and other requirements, you can get the greater of

- Your own Social Security retirement benefits.
- Half of your retired spouse’s benefit. You may get less if you start getting benefits before full retirement age.

What if only my spouse has a work history?
You will get a spousal benefit of an extra half of your spouse’s retirement benefit while you both are alive. You may get less if you start getting benefits before full retirement age.

What are survivor benefits?
A worker’s surviving spouse can get benefits based on the worker’s earnings record, if you meet age or other requirements. You can get the greater of
• Your own Social Security retirement benefit.
• Your deceased spouse’s Social Security benefit.

You can use the survivor benefit to delay retiring on your own record. You earn delayed retirement credits and increase your own benefit amount.

I am a surviving spouse. Am I eligible for survivor’s benefits?
Social Security Survivor Benefits has more info.

Are our children eligible for survivors’ benefits?
Social Security Survivor Benefits has more info.

What is the lump-sum death benefit?
It is a one-time benefit to a surviving spouse or, if there is no spouse, a minor child, who meets other requirements. If no spouse or child meets the requirements, there is no lump-sum death payment. Read Social Security Survivor Benefits.

I am a surviving spouse. Am I eligible for the lump-sum death benefit?
Social Security Survivor Benefits has more info.

What if we never married?
If you registered as domestic partners in Washington State after July 22, 2007, you should apply for Social Security spousal benefits. New rules (GN 00210.004 Non-

Marital Legal Relationships) apply to spouses and registered domestic partners. Social Security is now processing retirement, surviving spouse, and lump-sum death payment claims for same-sex couples in non-marital legal relationships and paying benefits where due.

What if we got married in a foreign country?
Social Security recognizes some foreign same-sex marriages in determining if you can get benefits. If you believe you may be eligible for Social Security benefits, apply now to protect against the loss of any potential benefits.

What if I am divorced?
You can get benefits on a former same-sex spouse’s earnings record IF both these are true:

• The marriage lasted at least ten years, if you were married in the U.S.
• Your spouse meets age and other requirements.

You could be entitled to

• Spousal retirement benefits.
• Spousal disability benefits.
• Survivor benefits.

Same-sex marriage was first permitted in the US on May 17, 2004. The earliest you could claim these benefits would be May 2014.
What if I applied before, but they denied my application?

Social Security has since issued a policy and ruling that could help you. If Social Security denied your application before June 26, 2015, they will reopen it. This might help you if you tried to apply before that date, and can prove Social Security staff discouraged you from doing so.

If Social Security has not contacted you about this, call them. When you talk to them, refer to POMS GN 00210.030.

What if I already got benefits before Social Security started recognizing same-sex marriage?

You can:

- **Withdraw your original application.**
  If you are within twelve months of starting benefits, you can file a request to withdraw your application (form 521) and pay back what you have received. If Social Security approves your request, ask them to treat you as if you had never started benefits. Each Social Security applicant only gets one “do-over.” You should ask that they not count this “do-over” against you because it is the result of a major change in the law.

- **Go back to work.** If you are under your Normal Retirement Age (NRA) and outside the twelve-month window since starting benefits and go back to work, Social Security will automatically apply its “earnings test” and lower your benefit if your wage earnings go over a set amount. Once you reach your NRA, Social Security will permanently increase your monthly benefit to account for the months they withheld benefits.

- **Voluntarily suspend.** Once you reach your NRA, you can voluntarily suspend your Social Security income and get credits for delaying your income when you restart your benefits later, but no later than age 70.

  ❖ The advice in this section applies to Social Security only, not SSI.

Where can I find Social Security’s rules?

The Social Security website (www.ssa.gov) has links to its regulations, handbook, and Program Operations Manual System (POMS).