



Benefits Denied

After paying into the system their whole lives, married same-sex couples will be denied thousands of dollars in Social Security benefits.

By Ben Furnas and Josh Rosenthal | March 2009

Introduction

In the United States today, tens of thousands of same-sex couples who are legally married in their state of residence are denied spousal Social Security benefits because the federal government does not acknowledge their marriage. Today, fifteen Massachusetts residents represented by [Gay and Lesbian Advocates and Defenders](#) filed suit against the Commissioner of the Social Security Administration and other federal agencies, challenging the constitutionality of the federal government's decision not to recognize their marriages.

After paying a lifetime of payroll taxes into a system that is supposed to provide retirement benefits for married couples, same-sex couples who marry are denied thousands of dollars in retirement benefits, survivor benefits, and lump-sum death benefits, simply because they are married to a person of the same sex.

This paper illustrates the cost of denied benefits to three typical couples, as well as one hypothetical couple with average characteristics of same-sex couples in Massachusetts, Connecticut, New York, and California, where same-sex marriages are officially acknowledged under state law.

We find that a same-sex couple with average characteristics—including average age, average income, and average gap in income between spouses—will be denied more than \$8,000 a year in Social Security survivor benefits upon the death of the higher-earning spouse after retirement.

Context

In 1996, Congress passed the Defense of Marriage Act, which President Bill Clinton then signed into law. The act has two substantive sections: Section 2 reinforces a state's right not to recognize another state's same-sex marriage, while Section 3 denies federal recognition of marriages between couples of the same sex. The law marked the first time the federal government overruled state determinations of marriage.

When passed, the law did not tangibly affect anyone, because no state issued marriage licenses to same-sex couples. Today, however, there are more than 10,000 married same-sex couples in Massachusetts alone, with many more in Connecticut and New York—all of whose marriages are entirely valid and unquestioned under state law. Another 18,000 couples were married in California, and their marriages are currently under review by the California Supreme Court in the wake of Proposition 8. In New York, same-sex marriages cannot be performed legally, but Gov. David Paterson has directed all state agencies to recognize same-sex marriages performed in other jurisdictions.

Today, however, the consequences for eligibility for federal benefits are very serious. A 2004 report by the [Government Accountability Office](#) found “1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.”

Social Security benefits denied

Among those benefits that are denied to married same-sex couples are three key Social Security benefits afforded to opposite-sex marriages:

- **The spousal retirement benefit:** When couples retire, each partner earns a Social Security benefit based on their income and the number of years they have worked and paid payroll taxes. If the federal government recognizes a couple as married, the spouse with the lower monthly benefit can choose to take either their own benefit or one-half their higher-earning spouse's benefit, whichever is more.
- **The spousal survivor benefit:** After retirement, if the spouse receiving higher Social Security benefits passes away, the surviving spouse can take this higher retirement benefit as his or her own.
- **The lump-sum death benefit:** Upon the death of a spouse, the surviving spouse is given a \$225 lump-sum payment to help pay for funeral arrangements.

Under current law, all these benefits are denied to same-sex couples whose states recognize them as married.

Analysis

To illustrate the cost of this discrimination, we analyzed the effect of denying these benefits to three example couples: a couple whose partners earn the same amount of money and thus would be on track to receive similar Social Security benefits, a couple earning different amounts of money who would thus benefit from survivor benefits, and a couple whose gap between incomes is so great that they would benefit from the spousal retirement benefit.

These benefits were calculated using the Social Security Administration's online calculator based on a typical earning path (past and future) for two 40-year-olds retiring at 67. This is the average age for a member of a same-sex couple according to the Williams' Institute analysis of Census Bureau figures and the normal retirement age according to the Social Security Administration.

The results are illustrated in the table below. (All monetary figures are in 2009 dollars though they represent benefits that would accrue to these couples upon their retirement).

Illustrative same-sex couples

	Couple 1		Couple 2		Couple 3	
	High earner	Low earner	High earner	Low earner	High earner	Low earner
Income	\$30,000	\$30,000	\$40,000	\$20,000	\$80,000	\$20,000
Projected social security retirement income	\$14,400	\$14,400	\$17,500	\$11,400	\$25,900	\$11,400
Value of spousal benefits denied						
Lump sum death benefit		\$225		\$225		\$225
Annual survivor benefit		\$0		\$6,100		\$14,500
Annual retirement benefit		\$0		\$0		\$1,550

Source: Center for American Progress Action Fund analysis of Census data analyzed by the Williams Institute and using the benefits calculator provided by the Social Security Administration

All married same-sex couples, even those with exactly the same Social Security income, such as Couple 1, are denied the lump-sum death payment in the tragic circumstance in which one spouse dies.

Among those whose Social Security retirement benefits differ ever so slightly, such as Couple 2, the low-earning spouse, upon retirement, is denied the spousal benefit of the higher earner's Social Security payment in the event of the higher earner's death.

A 2004 [study](#) by Lisa Bennett of the Human Rights Campaign and Gary Gates of the Urban Institute found that the average retired same-sex couple in 2004 was denied \$5,528 in survivor benefits each year.

In cases where the lower-earning spouses would be better off with a Social Security payment half the size of their partners', the lack of federal recognition keeps them from earning this higher amount. Take Couple 3, where one earner (perhaps a lawyer) earns substantially more than their spouse (perhaps a part-time school teacher or an artist). If the marriage was acknowledged by the federal government, the couple would be eligible for 1.5 times the higher earner's Social Security benefit, which in this case is higher than the sum of their individual benefit.

Couples with average characteristics

The following table shows the impact of these denied benefits on same-sex couples nationally and in several key states. This analysis differs from Lisa Bennett and Gary Gates' analysis because it illustrates the eventual effect on currently working same-sex couples rather than currently retired couples.

These couples have the average income of same-sex couples nationally and in their respective states as well as the average "gap" in incomes between the two couples, based on Census Data analyzed by the Williams Institute at UCLA. They are all considered to be the age of the average person in a same-sex couple nationally or in their state and have a retirement age of 67, the Social Security Administration's "normal" retirement age. All benefits are in 2009 dollars.

Couples based on average characteristics of same-sex couples nationally and in key states

	National		California		Connecticut		Massachusetts		New York	
	High earner	Low earner	High earner	Low earner	High earner	Low earner	High earner	Low earner	High earner	Low earner
Income	\$44,900	\$18,700	\$55,600	\$21,400	\$60,600	\$29,600	\$53,400	\$21,200	\$68,600	\$31,900
Projected social security retirement income	\$19,000	\$11,000	\$22,200	\$11,700	\$23,000	\$14,200	\$21,700	\$11,700	\$24,200	\$15,000
Value of spousal benefits denied										
Lump sum death benefit	\$225		\$225		\$225		\$225		\$225	
Annual survivor benefit	\$8,000		\$10,500		\$8,800		\$10,000		\$9,200	
Annual retirement benefit	\$0		\$0		\$0		\$0		\$0	

Note: The age, income, and income gap is based on the median income of a same-sex couple household and the average gap between incomes nationally and in each state as determined by the Williams Institute using Census data; all amounts in 2009 dollars.

Source: Center for American Progress Action Fund analysis of Census data analyzed by the Williams Institute and using the benefits calculator provided by the Social Security Administration