

# Legal Basics: Social Security

CHAPTER SUMMARY • JUNE 2017

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## Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we have focused our efforts on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

## Key Lessons

1. Social Security is a vital social insurance program not just for retirees, but also for workers with disabilities, spouses, survivors and dependents.
2. To be eligible for Social Security based on their own work history, an individual must be over age 62, or meet the Social Security disability standard.
3. The rules surrounding Social Security can be complex, so it is important to do sufficient research to accurately advise clients and to adequately address any questions or issues that arise.

## Section 1: What is Social Security?

Social Security is a social insurance program with benefits based on an individual's work history, which provides benefits for the wage earner, and can also provide auxiliary benefits for the wage earner's spouse, children, and some other survivors or dependents.<sup>1</sup> Social Security is funded by a payroll tax (under the Federal Insurance Contributions Act, or FICA) paid on wages in equal amounts by the employer and employee (6.2% each) for all persons working in a job covered by Social Security.<sup>2</sup> Financial need is not a factor in eligibility determinations. Social Security is also referred to as "Title II" and "OASDI" (Old Age ("retirement"), Survivors and Disability Insurance). In April 2017 just over 61 million beneficiaries were receiving OASDI benefits.<sup>3</sup>

Social Security benefits are sometimes confused with another benefit program that is part of the Social Security system, but has different eligibility rules and requirements—Supplemental Security Income (SSI). Both Social Security and SSI are administered by the Social Security Administration (SSA), an independent agency of the federal government. However, SSI is a means-tested program based on financial need for seniors and people with disabilities.<sup>4</sup> It provides cash assistance to seniors and people with disabilities who have extremely limited income and resources. In 2017, the maximum federal benefit for SSI is \$735 per month for an individual and \$1,103 per month for an eligible couple, with some states providing a small supplement to the federal benefit.<sup>5</sup> No work history is required to be eligible for SSI. SSI is also referred to as "Title XVI." Just under 8.3 million people were receiving SSI payments in April 2017.<sup>6</sup>

Approximately 2.8 million individuals receive both Social Security benefits and SSI benefits simultaneously.<sup>7</sup> This occurs when an individual's Social Security benefit is less than the SSI benefit, which can occur for people with a limited work history, a history of low-wage work or both. Of these individuals, known as "concurrent beneficiaries," 1.5 million have disabilities and are under 65, and almost 1.2 million are 65 or older.<sup>8</sup>

Social Security is an important means of economic security for millions. For over a third of beneficiaries over 65, Social Security makes up over 90% of their income.<sup>9</sup> Among communities of color, Asian, African American,

and Hispanic beneficiaries depend on Social Security for almost all of their income at even higher rates (41%, 45%, and 52%, respectively).<sup>10</sup> Social Security is also a critical benefit for women, who make up a greater proportion of older beneficiaries. Women outnumber men as Social Security beneficiaries by more than 10% at age 62, and by more than 30% at age 85.<sup>11</sup>

## Section 2: Eligibility of Wage Earners and Benefit Calculations

Eligibility for Social Security benefits generally requires that the wage earner be “fully insured” at the time of retirement, disability, or death.<sup>12</sup> An individual is considered “fully insured” for retirement if they have 40 “quarters” or “credits” in covered employment, or at least one “quarter.”<sup>13</sup> For disability or survivors’ benefits the minimum number of quarters required to receive benefits is lower, as discussed below.

The use of the term “quarters” is misleading; it has nothing to do with calendar quarters. It simply refers to a dollar amount that one must earn in a calendar year to obtain a credit for that year, with four being the maximum number of credits one can earn in a given year.<sup>14</sup> The amount required to earn a “quarter” is indexed and so normally changes from year to year. In 2017 wages of \$1,300 are required for one “quarter” of coverage.<sup>15</sup> A person who obtains the maximum four credits every year would be fully insured after ten years of work.

The amount beneficiaries receive when first getting retirement benefits sets the base for the amount they will receive for the rest of their lives. An individual can choose to begin receiving regular retirement benefits at full retirement age, which is currently age 66, reduced early retirement benefits starting at age 62, or increased retirement benefits up to age 70. The age at which a fully insured person is first entitled to full or unreduced retirement benefits is referred to as “full retirement age.” For those born between 1954 and 1960, the full retirement age is gradually increasing from 66 to 67.<sup>16</sup> The amount of benefits an individual will receive at full, or “normal,” retirement age is known as their “primary insurance amount” or PIA.<sup>17</sup>

### Disability benefits

Social Security is also available to wage earners who experience a disability. Social Security Disability Insurance is often referred to as “SSDI” or simply “DI.” To receive SSDI, the individual must be (1) disabled, (2) fully insured, and (3) “disability insured.”<sup>18</sup>

The Social Security Act defines being disabled as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>19</sup> The combined effect of a person’s impairments must be severe enough to prevent the individual from doing his or her previous work, or to engage in any other kind of substantial gainful work which exists in the national economy.

A person is “fully insured” for purposes of disability benefits if they have at least one quarter of coverage for each calendar year after they turn 21 the year before they become disabled.<sup>20</sup> A person is “disability insured” if the person has worked 20 of the last 40 quarters preceding the onset of disability.<sup>21</sup> A special rule covers individuals under 31.<sup>22</sup>

As an alternative to early retirement benefits, SSDI has assumed increased importance as the full retirement age increases. SSDI allows disabled older individuals to avoid the permanent benefit reduction they would potentially face for retiring before their full retirement age.<sup>23</sup>

### Appeals

While SSDI accounts for only about 18% of all Social Security Title II beneficiaries, it accounts for the majority of contested claims considered by the Social Security Administration because disability determinations are made on an individualized basis.

The Social Security Administration has a four-step administrative decision and appeals process for those who disagree with an initial determination—a decision made about a beneficiary’s eligibility or entitlement to benefits made at the SSA field office or state Disability Determination Services (DDS). At all stages of the appeal process, the individual has 60 days (plus five days for mailing) to file an appeal of an adverse decision.<sup>24</sup> Each stage excuses missed deadlines for good cause.<sup>25</sup>

1. **Reconsideration.** This first appeal step takes place at the local SSA office or at a regional program center. In the case of disability determinations, reconsideration takes place at the state Disability Determination Services.
2. **Administrative Law Judge Hearing.** If the claim is denied on reconsideration, the individual can further appeal for an evidentiary hearing before an Administrative Law Judge (ALJ). Unlike reconsideration, a high percentage of cases get reversed at this stage of the process. It is extremely important that all relevant issues be raised at the ALJ hearing, as it may not be possible to raise additional issues later in the process.
3. **Appeals Council.** A claimant can request Appeals Council review of an adverse ALJ decision. Review by the Appeals Council is discretionary, and in the overwhelming majority of cases, the Appeals Council simply denies review. Although it does not happen often, the Appeals Council can also take a case on “own motion” review to review an ALJ decision that was favorable to the claimant. A claimant can file an appeal in federal court from an adverse Appeals Council decision or from a denial of review by the Appeals Council.<sup>26</sup>
4. **Federal Court Review.** Up to the Appeals Council stage, a beneficiary is still within the SSA administrative appeal process, meaning the entire process is contained within the Social Security Administration. If the beneficiary loses at Appeals Council then their next appeal step (if they so decide) is outside of the Social Security Administration, where they ask a federal court to review the case. The Commissioner may extend the normal 60-day filing period upon written request stating the reasons for late filing.

## Section 3: Eligibility of Spouses, Child Dependents, and Survivors

### Spouses

A spouse who has reached full retirement age and is at least in the twelfth month of marriage can receive benefits on a wage earner’s work history that, when added to any benefit to which the spouse is entitled on their own record, equals one-half the benefit to which the spouse is entitled.<sup>27</sup> This means that a spouse will either receive 1) a combination of benefits totaling up to 50% of the wage earner’s benefit; or 2) only their own benefit, if it is more than half the wage earners’. A person can qualify at 62 for the spousal benefit with the usual reduction for early retirement. The wage earner must be entitled to receive retirement or disability benefits if anyone else is to receive auxiliary benefits on the wage earner’s record.

A divorced spouse 62 or older can receive the same benefits on a former spouse’s work history if (1) the marriage lasted at least 10 years; (2) the divorced spouse seeking benefits is unmarried; and (3) the wage earner is entitled to retirement or disability benefits.<sup>28</sup> If the wage earner is at least 62 but is not yet entitled to retirement benefits, then the divorced spouse can receive benefits on that record if the couple has been divorced for at least two years and all other requirements for divorced spouses are met.<sup>29</sup>

### Dependent children

The children of a Social Security recipient may also qualify for benefits on the retired parent’s account if they are unmarried and (1) under age 18 (or 19 if a full-time student in high school), or (2) an adult child with a disability that started before age 22.<sup>30</sup>

## Survivors

The spouse (or divorced spouse) of a deceased wage earner can receive survivor benefits if the spouse (1) is over 60, (2) is not entitled to a higher benefit on their own earnings record, and (3) was married for at least 9 months, or 10 consecutive years in the case of a divorced spouse.<sup>31</sup> If a surviving spouse begins receiving benefits before the surviving spouse's own full retirement age, the monthly amount will be reduced by a fraction of a percent for each month before full retirement age.<sup>32</sup> A surviving spouse can also begin receiving benefits as early as 50 if that spouse can establish disability under the Social Security disability standard and if the disability started before or within seven years of the deceased wage earner's death.<sup>33</sup> A surviving spouse under 62 can receive "mother's" or "father's" benefits when caring for the deceased worker's child who is under 16 or disabled.<sup>34</sup>

Surviving spouses receive 100% of the wage earner's primary insurance amount if both spouses do not retire before their full retirement age. If either spouse claims retirement benefits before their full retirement age, the surviving spouse will receive less.

Dependent children generally receive 50% of the primary insurance amount if the wage earner is alive, and 75% if the wage earner is deceased.<sup>35</sup>

Other dependents who can receive Social Security benefits on a retired, deceased, or disabled wage earner's work history if they are able to demonstrate dependency as defined by Social Security regulations include stepchildren, or grandchildren, and dependent parents.<sup>36</sup>

Please note that all retirement or survivor beneficiaries who are receiving benefits at younger than full retirement age are subject to an earnings test, in which Social Security withholds benefits for those who earn more than a certain level.<sup>37</sup>

## Family maximum

Social Security's family-maximum rules limit the total benefits paid to a beneficiary's family. Family-maximum rules that apply to retirement and survivor benefits differ from those that apply to disability benefits.<sup>38</sup> The rules for calculating family-maximum benefits are complicated, but note that the wage earner's own benefit is never reduced; only the benefits of dependents are reduced under these formulas. The benefits for divorced spouses (including surviving divorced spouses) are never reduced under family-maximum rules.

## Section 4: Other Considerations

### Immigrant eligibility

Generally only those non-U.S. citizens who are authorized to work in the United States by the Department of Homeland Security can get a Social Security number.<sup>39</sup> Social Security numbers are used to report an individual's wages to the government and to determine an individual's eligibility for Social Security benefits. Individuals need a Social Security number to work, collect Social Security benefits, and receive some other government services.

### Marriage recognition for same-sex couples

Social Security currently recognizes all valid marriages of same-sex couples for purposes of determining entitlement to Social Security benefits, regardless of the jurisdiction in which the couple is living.<sup>40</sup>

### Social Security overpayments

An overpayment occurs when a beneficiary receives a greater amount of benefits than the amount to which she is entitled in a given month.<sup>41</sup> Overpayments are relatively rare for Social Security beneficiaries, except for

those who are receiving SSDI due to exceeding the limits on earnings from work. Overpayments also result when a beneficiary dies and others continue to receive their benefits without reporting their death to SSA. If the beneficiary disputes either the existence or amount of the overpayment, they can appeal through SSA's administrative appeals process. If the beneficiary does not dispute the existence or amount of the overpayment and the amount of the overpayment is \$1,000 or more, the best option for those who have the means to do so is simply to return the money. Unfortunately, many beneficiaries facing overpayments do not have the means to do that.

An option for these individuals is to request waiver of collection of the overpayment. There is a right to waiver if 1) the beneficiary was without fault, and 2) recovery would either a) defeat the purpose of Title II or b) be against equity and good conscience.<sup>42</sup> Recovery is considered to defeat the purpose of Title II if the beneficiary uses substantially all of her income to meet "ordinary and necessary living expenses," and if resources are less than \$3,000 for an individual or \$5,000 for a couple, plus \$600 for each additional dependent. If the amount of the overpayment is less than \$1,000 and a waiver is requested, SSA generally will grant the waiver as a matter of administrative convenience.

## Medicare

At age 65 a senior is eligible for Medicare. Those receiving early retirement benefits are not eligible for Medicare until they are 65 years old. Those who apply for Social Security benefits once they reach full retirement age are automatically enrolled in Medicare. However, it is important for most people to apply for Medicare by age 65, otherwise they could incur lifelong increases in their premiums.<sup>43</sup> People receiving SSDI are automatically enrolled in Medicare after receiving benefits for two years, while people receiving SSI disability are not eligible for Medicare until they turn 65.

## Conclusion

It is vital for advocates to understand that the rules of the Social Security program can be complex, and they should perform thorough research to ensure that the clients who rely on these benefits for their economic security are receiving and continue to receive the full amount to which they are entitled.

## Additional Resources

- Tracey Gronniger, [tgronniger@justiceinaging.org](mailto:tgronniger@justiceinaging.org)
- Kate Lang, [klang@justiceinaging.org](mailto:klang@justiceinaging.org)
- Social Security Act: 42 U.S.C. §§ 401-434
- Social Security Regulations: 20 C.F.R. §§ 404.1 *et. seq.*
- Program Operations Manual System (POMS): [secure.ssa.gov/apps10/poms.nsf/partlist](https://secure.ssa.gov/apps10/poms.nsf/partlist)
- Social Security Administration: [ssa.gov](https://ssa.gov)
- Understanding Supplemental Security Income Guide: [ssa.gov/ssi/text-understanding-ssi.htm](https://ssa.gov/ssi/text-understanding-ssi.htm)
- Kate Lang, *Social Security and Supplemental Security Income 101*, Clearinghouse Review Journal of Poverty Law and Policy, February 2017.
- Justice in Aging Resources: [justiceinaging.org](https://justiceinaging.org)

**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

*This Chapter Summary was supported by a contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.*

## Endnotes

- 1 [42 U.S.C. §§ 402, 423](#) (2015).
- 2 [26 U.S.C. § 3101](#) (2015). The amount of a person's wages subject to the payroll tax is capped. In 2017 the cap is set at a maximum of \$127,200 ([Social Security Administration, Contribution and Benefit Base](#) [2017]).
- 3 Monthly Statistical Snapshot, April 2017, Table 1, available at [ssa.gov/policy/docs/quickfacts/stat\\_snapshot/#table1](#).
- 4 [42 U.S.C. §§ 138101383f](#).
- 5 [Social Security Administration, SSI Federal Payment Amounts for 2017](#) [2016], available at [ssa.gov/OACT/COLA/SSI.html](#); see [Program Operations Manual System \(POMS\), General Information About State Supplementation](#) (SI 01401.001) (Feb. 15, 2013), available at [secure.ssa.gov/apps10/poms.nsf/lx/0501401001](#); [Understanding Supplemental Security Income SSI Benefits—2016 Edition](#), available at [ssa.gov/ssi/text-benefits-ussi.htm](#).
- 6 [Social Security Administration, SSI Monthly Statistics](#), April 2017, Table 1, available at [ssa.gov/policy/docs/statcomps/ssi\\_monthly/2017-04/table01.html](#).
- 7 Social Security Administration, Monthly Statistical Snapshot, April 2017, Table 1, available at [ssa.gov/policy/docs/quickfacts/stat\\_snapshot/#table1](#).
- 8 *Id.*
- 9 [Income of the Population 55 or Older, 2014, "Relative Importance of Social Security for Beneficiary Aged Units," Table 9.A1](#), available at [ssa.gov/policy/docs/statcomps/income\\_pop55/2014/sect09.html#table9.a1](#).
- 10 [Income of the Population 55 or Older, 2014, "Relative Importance of Social Security for Beneficiary Units 65 or Older," Table 9.A3](#), available at [ssa.gov/policy/docs/statcomps/income\\_pop55/2014/sect09.html#table9.a3](#).
- 11 [SSA Fact Sheet, "Social Security is Important to Women,"](#) available at [ssa.gov/news/press/factsheets/women-alt.pdf](#).
- 12 [42 U.S.C. § 415; § 414; 20 C.F.R. § 404.110](#) (2017). Some survivor benefits are an exception to this rule (see [20 C.F.R. § 404.120](#)).
- 13 [20 C.F.R. §§ 404.130](#).
- 14 [42 U.S.C. § 413](#).
- 15 [Social Security Administration, Quarter of Coverage](#) [2017] (table showing amount of earnings needed to earn quarters of coverage in previous years).
- 16 [Retirement Planner: Benefits by Year of Birth](#) (n.d.), available at [ssa.gov/planners/retire/agereduction.html](#).
- 17 [Primary Insurance Amount](#) [2017], available at [ssa.gov/oact/cola/piaformula.html](#).
- 18 [20 C.F.R. §§ 404.130](#)
- 19 [42 U.S.C. § 423\(d\)\(1\)\(A\)](#).
- 20 [20 C.F.R. §§ 404.110; 404.132](#).
- 21 [20 C.F.R. §§ 404.130](#).
- 22 [Id. § 404.130\(c\),\(d\)](#).
- 23 See [Social Security Administration, Disabled Worker Beneficiaries in Current Payment Status at End of June 2016, Distributed by Age and Sex](#) (July 9, 2016), available at [ssa.gov/OACT/ProgData/benefits/da\\_age201606.html](#).
- 24 [Id. §§ 416.1409, 416.1433, 416.1468, 404.909, 404.933, 404.968](#).
- 25 [Id. §§ 416.1411, 404.911](#).
- 26 [Id. §§ 416.1481, 404.981](#).
- 27 [20 C.F.R. § 404.333](#). There are very limited exceptions to the 12-month marriage-duration requirement ([20 C.F.R. § 404.330\(a\)\(2\)–\(3\)](#)). Note the difference between eligibility and entitlement. People are eligible for benefits if they can meet all the statutory requirements; however, people are not entitled until they have applied for benefits and received a determination from the Social Security Administration that they are entitled.
- 28 [20 C.F.R. § 404.331](#).
- 29 *Id.*
- 30 [20 C.F.R. § 404.350](#).
- 31 The nine-month rule has a few specific limited exceptions; the ten-year rule for a divorced spouse has no exceptions ([20 C.F.R. § 404.335\(a\)\(2\)](#)).

- 32 [Social Security Administration, Social Security Benefits: Benefits for Spouses](#) (Sept. 25, 2013), available at [ssa.gov/OACT/quickcalc/spouse.html](#).
- 33 [20 C.F.R. §§ 404.335\(c\)](#), [404.336\(c\)](#).
- 34 [Id. § 404.339](#).
- 35 [20 C.F.R. § 404.353](#).
- 36 [Id. §§ 404.350-404.359](#) (minor children, stepchildren, or grandchildren), [§ 404.350](#) (a) (disabled adult child must be unmarried, and disability must have begun before 22), [§ 404.370](#) (dependent parents of deceased wage earner).
- 37 Social Security Administration, Exempt Amounts Under The Earnings Test, [ssa.gov/oact/cola/rtea.html](#).
- 38 See [Kathleen Romig & Dave Shoffner, Understanding the Social Security Family Maximum](#), 75 (3) Social Security Bulletin 1 (2015), available at [ssa.gov/policy/docs/ssb/v75n3/v75n3p1.pdf](#); [Social Security Administration, Program Operations Manual System \(POMS\), Family Maximum Chart](#) (RS 00605.910) (Nov. 9, 2016), available at [secure.ssa.gov/apps10/poms.nsf/lnx/0300605910](#); [id.](#), [Maximum Family Benefits Based on DIB Eligibility After 1978—Initial Entitlement After June 1980](#) (RS 00615.742) (Nov. 14, 2016), available at [secure.ssa.gov/apps10/poms.nsf/lnx/0300615742](#).
- 39 Individuals who want a number for federal tax purposes and are not authorized to work in the United States can apply to the Internal Revenue Service for an Individual Taxpayer Identification Number (see [Internal Revenue Service, Form W-7: Application for IRS Individual Taxpayer Identification Number](#) (Sept. 2016)), available at [irs.gov/pub/irs-pdf/fw7.pdf](#).
- 40 See [Obergefell v. Hodges](#), 135 S. Ct. 2584 (2015), available at [supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](#).
- 41 See [20 C.F.R. § 404.501](#).
- 42 [20 C.F.R. § 404.506](#).
- 43 See [Medicare Benefits](#), available at [ssa.gov/medicare](#).