GN 00210.800 Same-Sex Marriage, SSI Same-Sex Couples, and SSI Deeming from a Same-Sex Ineligible Spouse

Citations:
Social Security Act §1614(b) and §1614(d)
Regulations 20 CFR 416.1801 through 416.1835

A. Introduction to processing SSI claims involving same-sex marriage
Because of the Supreme Court decision in *Windsor*, issued on June 26, 2013, we are now able to process some Supplemental Security Income (SSI) claims, appeals, and post-eligibility actions that require determining a same-sex couple's marital status.

B. Policy for recognition of same-sex marriage for SSI purposes

1. When we will recognize a same-sex marriage for SSI purposes
We will recognize that an SSI claimant is in a same-sex marriage when he or she:
• lives with someone of the same sex; and
• is legally married to that individual under the laws of the state of their permanent home.

2. When we will not recognize a same-sex marriage for SSI purposes
We will not recognize that a claimant and a same-sex individual with whom he or she lives are married for SSI purposes based on:
• his or her entitlement to title II benefits as same-sex spouses;
• his or her non-marital legal relationship (e.g, a civil union, a domestic partnership); or
• holding himself or herself out to the community as married.

IMPORTANT: Do not develop holding out for same-sex couples.

C. When not to use these instructions for determining SSI marital status
Do not use the instructions in GN 00210.800 if:
• the claimant alleges being unmarried, unless we have evidence to the contrary; GN 00305.005B.5.
• the claimant's marriage involves a transgender individual, and instructs you to process the case as an opposite-sex marriage;

D. When to recognize a same-sex marriage for SSI purposes, such as eligibility and payment amount
Review all SSI claims, appeals, and post-eligibility actions that have been on hold per GN 00210.005 for possible processing under these instructions.
For new and pending claims and appeals, we follow procedures for determining the

month of eligibility based on the date of application as described in GN 00204.007. We will recognize a same-sex marriage for SSI purposes, consistent with these instructions, as early as the date of the application.

For post-eligibility actions, we will recognize a same-sex marriage as of June 26, 2013, the date of the Supreme Court's Windsor decision.

See SI 00501.150 for information on:

• when we apply the marital relationship to determine eligibility and payment amount; and

• when we no longer consider two individuals married.

E. Determining a same-sex couple's marital status for SSI purposes

Step	Action
1	If the claimant alleges that he or she lives with someone in a **same-sex marriage:** Do not use entitlement to Title II same-sex spouse benefits to recognize a Title XVI same-sex marriage; Do not use an allegation of a non-marital legal relationship (e.g., a civil union, a domestic partnership) to recognize a same-sex marriage for Title XVI purposes; and Do not develop for holding out. **Go to** step 2.
2	Did the claimant celebrate a same-sex marriage in a foreign jurisdiction; that is, somewhere other than in: the 50 United States; the District of Columbia; the U.S. Virgin Islands; Puerto Rico; Guam; American Samoa; or the Northern Mariana Islands? **If yes**, go to GN 00210.006 to determine if the claimant is married for SSI purposes. **If no**, go to step 3.
3	Does the chart in GN 00210.003 list the state where the claimant makes his or her permanent home? **If yes**, go to step 4. **If no**, the claimant is not married for SSI purposes. Do not develop for holding out. Process the MSSICS claim for an unmarried individual. Go to step 6 for documentation requirements.
4	Refer to **Columns I and II** of the chart in GN 00210.003. Did the claimant marry his or her same-sex spouse during a period when the laws of the state where the marriage took place permitted

	same-sex marriage? **If yes**, go to step 5. **If no**, the claimant is not married for SSI purposes. Do not develop for holding out. Complete the MSSICS claims path for an unmarried individual. Go to step 6 for documentation requirements.
5	Refer to **Columns I and III** of the chart in GN 00210.003. Did the claimant make his or her permanent home in a state during a period when the laws of the state recognized same-sex marriage? **If yes**, the claimant is married for SSI purposes. Go to GN 00210.800F to process the claim as a "force due case. **If no**, the claimant is not married for SSI purposes. Do not develop for holding out. Complete the MSSICS claim for an unmarried individual. Go to step 6 for documentation requirements.
6	Record the claimant's allegations regarding the marriage (e.g., date and location of marriage celebration, dates of changes in the state of permanent home) in the STATEMENT OF PERSON (PRINTED REMARKS) portion of the associated remarks for AMAR. This information will appear on the printed output for the claimant's attestation. Add a 626 unit code using the following chart in GN 00210.800.F.1.; Prepare a Report of Contact (DROC) containing the rationale for the determination that the claimant is not in a same-sex marriage for any month since the date of application, and record any necessary supporting documentation, including name of the alleged spouse, DOB, SSN, date and location of marriage. Lock the DROC screen. Add a remark to the SSR using one of the five available remark lines: "NOT IN A SAME-SEX MARRIAGE" – SEE DROC **NOTE:** For every month of eligibility, determine if the claimant's permanent home was in a state that recognized same-sex marriage. Consider the couple married for months when they make their permanent home in a state that recognizes same-sex marriage. Consider them unmarried for months when they make their permanent home in a state that does not recognize same-sex marriage.

F. Processing SSI claims, appeals, and post-eligibility actions when we recognize a same-sex marriage for SSI purposes

1. Processing claims

Take the following steps to process the application.

- Take the application in MSSICS and document the marriage on the AMAR screen.
- Establish the SSR. The application will stay in payment status H80 because of the edit condition (ECI: CD), "Sex for both members of a couple cannot be identical."
- Ensure the remark "M02 REQD-WINDSOR CASE MM/DD/YYYY" is present on the SSR as cited in GN 00210.800F.1.b. in this section.
- Input "WDSR" in the Case Characteristic Data (CG) field.
- On the development worksheet (DW01), enter the code (from the chart below) that applies to the status alleged by the claimant at the time of the application as the first four positions of the unit code.

IMPORTANT: Retain this unit code, regardless of the determination or changes made in the adjudicative level of the case.

Type of Same-Sex Relationship Alleged When Claim Established	Code
Marriage	626M
Civil Union	626C
Domestic Partnership	626D
Reciprocal Beneficiary	626R
Other	626O

a. Mandatory Technical Expert (TE) or Supervisor Case Review

Take the following steps prior to processing SSI claims, appeals, and post-eligibility actions:

MSSICS cases:

- The technician initiating the initial claim, appeal, or post-eligibility event must prepare a Report of Contact (DROC) containing the rationale for proposed FO determination and any necessary supporting documentation. The technician must lock the DROC screen.**EXAMPLE:** "M02 PROCESSING REQUIRED AS COUPLE IS IN A SAME-SEX MARRIAGE. PER GN 00210.800, WE CAN CONSIDER THE COUPLE MARRIED FOR SSI PURPOSES BECAUSE THE COUPLE RESIDES IN A STATE THAT RECOGNIZES SAME-SEX MARRIAGE. INCOME AND RESOURCES FOR BOTH MEMBERS OF THE COUPLE WERE RECORDED IN THE MSSICS PATH. E-COMPUTATION PERFORMED AND STORED IN THE ELECTRONIC FOLDER."
- A TE or Supervisor must review and document approval on a separate DROC indicating the FO determination is accurate in accordance with policy. The TE or Supervisor must lock the DROC screen.**NOTE:** If a force due transaction (M02) is involved, the DROC used to approve the FO determination may also be used to document approval of the force due transaction. This will satisfy the policy requirement in SM 01701.001. Once the review is completed and documented, the TE or Supervisor may process the force due action through Direct SSR

Update using his or her PIN.

Non-MSSICS cases:
- The technician initiating the initial claim, appeal, or post-eligibility event must prepare an SSA-5002 (Report of Contact) containing the rationale for proposed FO determination and any necessary supporting documentation. The technician must store the SSA-5002 in the Certified Electronic Folder (CEF), if one exists, or the Non-Disability Repository for Evidentiary Documents (NDRED).**EXAMPLE:** "M02 PROCESSING REQUIRED AS COUPLE IS IN A SAME-SEX MARRIAGE. PER GN 00210.800, WE CAN CONSIDER THE COUPLE MARRIED FOR SSI PURPOSES BECAUSE THE COUPLE RESIDES IN A STATE THAT RECOGNIZES SAME-SEX MARRIAGE. INCOME AND RESOURCES FOR BOTH MEMBERS OF THE COUPLE WERE RECORDED ON PAPER SSA-8000 AND FAXED INTO NDRED. E-COMPUTATION PERFORMED AND STORED IN NDRED."
- A TE or Supervisor must review and document approval on a separate SSA-5002 indicating the FO determination is accurate in accordance with policy. Store the SSA-5002 in the CEF, if one exists, or NDRED.**NOTE:** If a force due transaction (M02) is involved, the SSA-5002 (Report of Contact) used to approve the FO determination may also be used to document approval of the force due transaction. This will satisfy the policy requirement in SM 01701.001. Once the review is completed and documented, the TE or Supervisor may process the force due action through Direct SSR Update using his or her PIN.

b. Processing awards
- Take the following steps to process the award when the claimant meets all SSI eligibility factors:
- Use the Force Due (M02) process to control the case and pay the individual. In order to obtain accurate payment information, you must manually perform an eComputation and then save a copy of the eComputation in eView.
- The SSR initially created from the MSSICS input will not generate payment computation information as it will remain in H80 status. For more information, refer to the instructions on Force Due in SM 01701.001 and MSOM BUSSR 002.006.
- In order to track cases on the Force Pay Listing website, you must add a remark to the SSR exactly as follows using one of the five available remark lines: "M02 REQD-WINDSOR CASE MM/DD/YYYY." (Use the date you post the remark as the date for the MM/DD/YYYY placeholder.) The RMKS FOUND column on the FO Case Listing will contain a "Yes" if the remark is posted properly. See MSOM MSSICS 023.003, SSR remarks (CRMK).**NOTE**: Since these cases will be in Force Due (M02) status, they will be listed on the Force Pay Listing website. The listings are updated quarterly. You must monitor these cases closely as the system will not automatically terminate the claimant's eligibility if a relevant period of ineligibility occurs.
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c. Processing technical claim denials

Use the Force Due process in SM 01701.001 to process the technical claim denial when the SSI claimant is ineligible.

In order to track cases on the Force Pay Listing website, you must add a remark to the SSR exactly as follows using one of the five available remark lines: "M02 NOPAY-WINDSOR DENIAL MM/DD/YYYY." (Use the date you post the remark as the date for the MM/DD/YYYY placeholder.) The RMKS FOUND column on the FO Case Listing will contain a "Yes" if the remark is posted properly. See MSOM MSSICS 023.003, SSR remarks (CRMK).

d. Notices

Force pay actions will not generate automated notices to the claimant. Therefore, you must send one of the manual notices listed below using the document process system (DPS); send the notice to the Online Retrieval System (ORS) to be stored.
- Award Notice (SSA-L8025) NL 00802.015
- Denial Notice (SSA-L8030) NL 00802.025

2. Processing post-eligibility actions

Take the following steps to process the post-eligibility action due to a change in marital status for SSI purposes. This includes a marital-status change when a claimant moves to a state that treats same-sex marriage differently than the state where the claimant and his or her same-sex spouse previously made their permanent home. Refer to SI 00501.150, Determining Whether a Marital Relationship Exists, for more information.
- Collect all necessary technical (i.e., non-medical) information and evidence.
- Update the appropriate screens including the AMAR screen, all applicable living arrangement screens, and the spouse's income and resource paths.
- On the development worksheet (DW01), enter the code that applies to the status alleged by the claimant using the chart in GN 00210.800.F.1. in this section.
- Use the Force Due process to control the case. For more information, refer to the instructions on Force Due in SM 01701.001 and MSOM BUSSR 002.006.
- In order to obtain accurate payment information, establish a manual eComputation and then save a copy of the eComputation in NDRed. For more information, refer to the instructions on Force Due in SM 01701.001 and MSOM BUSSR 002.006.
- **NOTE:** Since these cases will be in Force Due status, they will be listed on the Force Pay Listing website. The listings are updated quarterly. You must monitor these cases closely as the system will not automatically terminate the claimant's eligibility if a period of ineligibility occurs.
- In order to track cases on the Force Pay Listing website, you must add a remark to the SSR exactly as follows using one of the five available remark lines: "M02 REQD-WINDSOR CASE MM/DD/YYYY." (Use the date you post the remark as the date for the MM/DD/YYYY placeholder.) The RMKS FOUND column on the FO Case Listing will contain a "Yes" if the remark is posted properly. See MSOM MSSICS 023.003, SSR remarks (CRMK).

G. Examples

1. Evidence contrary to the claimant's allegation of marital status
Jed applies for SSI benefits as an unmarried individual. He lists Bart as an unrelated household member living in Jed's permanent home in Connecticut. The claims representative (CR) notes that an old SSI record showed Jed and Bart were married and living New York. When the CR questions Jed's current allegation, Jed explains that he and Bart are in the process of getting divorced and plan to live separately. The CR determines that Jed is still married, because Connecticut appears in Column III as a state that has recognized same-sex marriages performed in other states since 2008.

2. Claimant in a same-sex marriage for Title II purposes, unmarried for SSI purposes
When Kathy applies for SSI benefits as an aged individual, her MBR indicates that she began receiving Title II benefits as Polly's same-sex spouse a year ago. Kathy and Polly now make their permanent home in a state that does not appear on the chart in GN 00210.003; therefore, they are not married for SSI purposes. The CR does not adopt the Title II determination that Kathy and Polly are same-sex spouses. The CR does not develop for holding out.

H. References
- GN 00204.007 Application Filing Date
- GN 00210.001 Windsor Same-Sex Marriage Claims--Introduction
- GN 00210.005 Holding Claims, Appeals, and Post-Entitlement Actions Involving Same-Sex Marriages or Legal Same-Sex Relationships other than Marriage
- GN 00210.010 Interviewing Individuals with Claims Involving Same-Sex Relationships
- GN 00210.850 Same-Sex Parents, a Parent's Same-Sex Marriage, and Supplemental Security Income (SSI) Parent-Child Deeming – Initial Claim and Post-Eligibility Cases
- GN 00305.001 Determining Family Status
- GN 00305.005 Determining Marital Status
- SI 00501.000 Eligibility Under the Supplemental Security Income (SSI) Provisions
- SI 00501.150 Determining Whether a Marital Relationship Exists
- SI 00602.001 The Abbreviated Application Process
- SI 01310.105 Deeming Concept - Parent
- SM 01701.001 How Force Due and Force Payment Work
MSOM BUSSR 002.006 Force Due Process