

THE COST OF MARRIAGE INEQUALITY TO GAY, LESBIAN AND BISEXUAL SENIORS

A Human Rights Campaign Foundation Report

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**Lack of Marriage License May Cost Tens of Thousands of Dollars When Partner Dies,
Increases Risk of Losing One's Home**

**More than One in 10 Same-Sex Couples Include a Partner over 65,
More than One in Four Include a Partner over 55**

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OVERVIEW

When a gay, lesbian or bisexual senior dies, his or her surviving partner faces a financial loss that can amount to tens of thousands of dollars because the couple cannot be recognized as legally married in the United States. Despite having paid taxes their whole lifetime at the same rate as other Americans, surviving partners are:

1. Denied the Social Security survivor benefits that are made available to all married couples;
2. Heavily taxed on any retirement plan – 401(k) or IRA – they inherit from their partners, although married spouses can inherit these plans tax-free; and
3. Charged an estate tax on the inheritance of a home, even if it was jointly owned – a tax that would not apply to married spouses.

Same-sex senior couples also are more likely than married heterosexual couples to still be making mortgage payments on their home. This higher debt burden, combined with the financial losses that stem from being unmarried, means that surviving partners may also be at greater risk of losing their homes upon the death of a partner than surviving heterosexual spouses.

In addition, surviving partners whose name does not appear on the title of the home the couple lived in are at risk of being forced out by the deceased partners' next of kin who may claim ownership – a risk no surviving spouse would face under any circumstances.

Gay, lesbian and bisexual seniors also are at significant risk of losing their home when an elderly partner enters a nursing home. This is because federal Medicaid law permits a married spouse to remain in the couple's home when a husband or wife enters a nursing home – but it does not grant unmarried couples the same right.

AGING OF GAY, LESBIAN AND BISEXUAL COMMUNITY

More than one in 10 same-sex couples include a partner 65 years old or older, and nearly one in 10 couples are comprised of two people 65 or older, according to Census 2000.¹ Two thirds of these couples have lived together in the same house for five years or more, and more than four out of five own their home.²

More than one in 10 same-sex couples include a partner 65 years old or older.

The proportion of same-sex couples that includes one or both partners 55 and older is even higher. Nearly one in four same-sex couples include a partner 55 years old or older, and nearly one in five couples are comprised of two people 55 or older.³

As is the case with married heterosexual senior couples, the greatest numbers of same-sex senior couples live in California, New York and Florida, while Illinois and Arizona also have significant numbers.

The 10 counties with the greatest number of same-sex couples that include a partner 65 years old or older are:

- | | |
|----------------------------------|---------------|
| 1. Los Angeles County, Calif. | 3,410 couples |
| 2. Cook County, Ill. | 2,190 |
| 3. Kings County (Brooklyn), N.Y. | 1,440 |
| 4. Broward County, Fla. | 1,415 |
| 5. Miami-Dade County, Fla. | 1,265 |
| 6. Palm Beach County, Fla. | 1,155 |
| 7. San Diego County, Calif. | 1,135 |
| 8. Queens County, N.Y. | 1,090 |
| 9. Riverside County, Calif. | 1,085 |
| 10. Maricopa County, Ariz. | 1,070 |

There are many more same-sex couples that include a partner 55 years old or older – more than twice as many in some counties. For example, the 10 most popular counties for couples that include a partner 55 or older are:

1. Los Angeles County, Calif.	7,540 couples
2. Cook County, Ill.	4,340
3. Kings County (Brooklyn), N.Y.	2,845
4. New York County (Manhattan), N.Y.	2,815
5. Broward County, Fla.	2,560
6. Miami-Dade County, Fla.	2,370
7. San Diego County, Calif.	2,290
8. Riverside County, Calif.	2,230
9. Queens County, N.Y.	2,135
10. Maricopa County, Ariz.	2,130

The highest concentrations of same-sex senior couples, in comparison to all seniors, are in:

1. San Francisco County, Calif.	7.77*	total of 825
2. New York County (Manhattan), N.Y.	5.73	1,070
3. Riverside County, Calif.	5.54	1,085
4. Broward County, Fla.	5.42	1,415
5. Kings County (Brooklyn), N.Y.	5.09	1,440
6. Baltimore City, Md.	4.66	400
7. Polk County, Fla.	4.45	395
8. Palm Beach County, Fla.	4.41	1,155
9. Alameda County, Calif.	4.40	650
10. Philadelphia County, Pa.	4.40	940

* Number of coupled same-sex seniors for every 1,000 adults aged 65 or older.

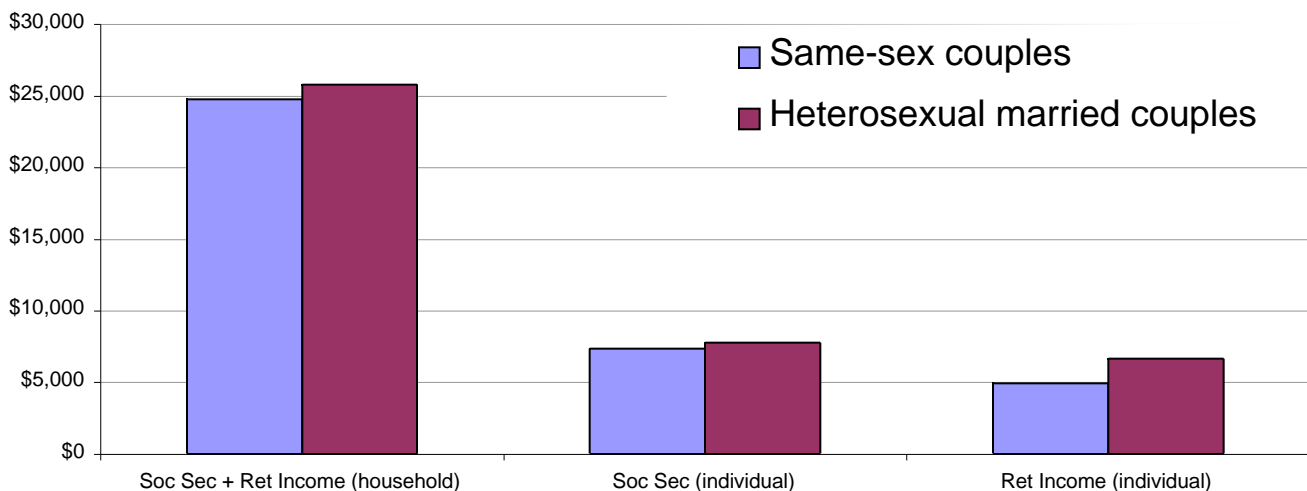
Note: Census 2000 counts of same-sex unmarried partners should not be interpreted as an actual count of either the entire gay, lesbian and bisexual population or the same-sex coupled population of the United States. Counts of same-sex couples do not include any single gay men or lesbians as the Census questionnaire does not include questions about sexual orientation, sexual behavior or sexual attraction. Further, Census 2000 likely undercounts same-sex couples (identified by their sex and relationship status: an adult of the same sex is identified as the "husband/wife" or "unmarried partner" of the person filling out the Census form). Several factors could explain this undercount. For confidentiality reasons, some same-sex couples may feel uncomfortable identifying the nature of their relationship on a government survey. Some couples may define their relationship as something other than "husband/wife" or "unmarried partner." Estimates of the undercount vary. In their report, "Missing Same-sex Couples in Census 2000," Badgett and Rodgers (IGLSS 2003, http://www.igls.org/media/files/c2k_leftout.pdf) find that the Census Bureau missed at least 16 to 19 percent of all gay or lesbian couples. If five percent of the U.S. adult population is gay or lesbian and approximately 30 percent of gay men and lesbians are coupled (as several surveys suggest), then Census figures did not count 62 percent of all same-sex couples.

RELATION BETWEEN MARITAL STATUS AND INCOME, BENEFITS AND TAXES

Married senior couples earn 4.3 percent, or \$1,056, more in combined household retirement income on average each year than same-sex unmarried couples, according to Census 2000. Married couples earn a combined household retirement income of \$25,799 compared to \$24,743 for same-sex unmarried couples. (See Figure 1)^{4 5}

Yet while this difference is significant, it pales in comparison to the difference in how same-sex unmarried couples and heterosexual married couples are treated when one member of a couple dies. At that point, a marriage license can make a difference of tens of thousands of dollars – money retained by married couples and lost by couples who cannot legally marry or whose marriages are not legally recognized.

Average Social Security and Retirement Income
Same-sex unmarried partners vs. Heterosexual married couples, Age 65+
Census 2000, Public Use Microdata Samples



Loss of Social Security survivor benefits.

When one member of a married couple dies, the surviving spouse is eligible for Social Security survivor benefits, which means he or she can retain the Social Security income of whichever member of the couple had the highest earnings.

Without legal marriage recognition, same-sex couples are ineligible for survivor benefits when one of them dies. As a result, if the same-sex partner with the higher Social Security income dies, the surviving partner only retains his or her lesser income.

The loss of Social Security benefits for surviving partners amounts to an average loss of \$5,528 each

Same-sex couples 65 and over earn an average of \$7,354 each in Social Security income. Heterosexual married couples earn an average of \$7,770 each, according to Census 2000.

The loss of survivor benefits for surviving partners with lesser incomes amounts to an average loss of \$5,528 each year, which is the average difference in Social Security incomes within same-sex senior couples, according to Census 2000.⁶

Example. A married heterosexual couple earns a combined Social Security income of \$14,472, with the higher income spouse earning \$10,000 and the lower income spouse earning \$4,472. If the higher income spouse dies, the lower income spouse would retain Social Security benefits of \$10,000 a year.

An unmarried same-sex couple in the same circumstances would face a very different result.

Example. An unmarried same-sex couple earns a combined Social Security income of \$14,472, with the higher income spouse earning \$10,000 and the lower income spouse earning \$4,472. If the higher income partner dies, the lower income partner would retain Social Security benefits of only \$4,472 a year – or slightly less than half (44.7 percent) of what the heterosexual spouse received.

Tax hit on inherited retirement income.

Same-sex senior couples earn an average of \$4,936 each in retirement income, which is 34.7 percent less than heterosexual senior couples, who earn an average of \$6,647 each, according to Census 2000.

Surviving partners are routinely forced to pay tens of thousands of dollars in taxes when they inherit a retirement plan from an unmarried partner, while married spouses in the same situation are charged no taxes at all.

Yet gay, lesbian and bisexual surviving partners pay far more in taxes than surviving spouses do when one member of the couple dies and leaves a retirement account to the other. Indeed, surviving partners must pay potentially tens of thousands of dollars in taxes when they inherit a retirement plan from an unmarried partner, while married spouses in the same situation are charged

no taxes at all.

The reason: When a married spouse dies, the surviving spouse can “roll over” or transfer money from the inherited retirement plan into his or her own plan without taxation or limitations and allow it to continue to grow tax-free.

But because same-sex couples cannot legally marry in the United States, they are treated as strangers (individuals) under the tax code. This means they are denied the right to roll over the inherited retirement plan into their own and are forced to receive all the funds in a lump sum. These payouts are immediately subjected to taxation, which can push the recipient into a higher tax bracket.

Example. A 63-year-old man who has a 401(k) plan with a balance of \$162,000⁷ dies and leaves the account to his partner who has an income of \$30,000 per year.⁸ Forced to receive the entire balance in a lump sum, the surviving partner is propelled from a 15 percent to a 33 percent tax bracket, and his federal tax liability jumps from \$2,980 to \$49,360.⁹

Gay, lesbian and bisexual partners who inherit a more modest retirement plan also are severely taxed.

Example. A 63-year woman with a 401(k) valued at \$43,000¹⁰ dies and leaves the account to her partner, who has an income of \$30,000 per year. Forced to receive the funds in a lump sum, the surviving partner would be bumped from a 15 percent to a 25 percent tax bracket, and her federal tax liability would increase from \$2,980 to \$13,120.¹¹

Gay, lesbian and bisexual partners who already are in a higher income bracket also are hard hit by taxes when one of them dies.

Example. A surviving partner earning \$98,000 per year¹² inherits a 401(k) worth \$162,000 from a partner and is forced to receive it in one lump sum. He or she is, as a result, bumped

from a 28 percent to a 33 percent tax bracket, and his or her federal tax liability increases from \$20,010 to \$71,800.¹³

Greater estate (inheritance) tax burden. More than four out of five same-sex senior couples own their home, according to Census 2000. The median value of these homes is \$95,000, which is \$7,000 less than the median value of all homes owned by heterosexual married senior couples.¹⁴

A surviving gay, lesbian or bisexual partner is charged an estate tax on the couple's home, even if the home had been jointly owned.

Yet when one member of a same-sex couple dies and leaves the home to his or her partner, the surviving partner is hit with a second tax burden that a surviving spouse in the same circumstances does not face. The surviving member of the same-sex couple is charged an estate tax on the inheritance of a home, even if the home had been jointly owned.

Specifically, the value of the deceased partner's portion of the home is taxed upon his or her death because the couple, being legally unmarried, are treated as strangers under the tax code. (These taxes vary significantly from state to state. In several states, there are severe state estate tax penalties even for middle-class couples.)

A surviving spouse in the same circumstances, however, is charged no estate tax at all – even if the home had been singly owned by the deceased spouse.

INCREASED RISK OF LOSING HOME

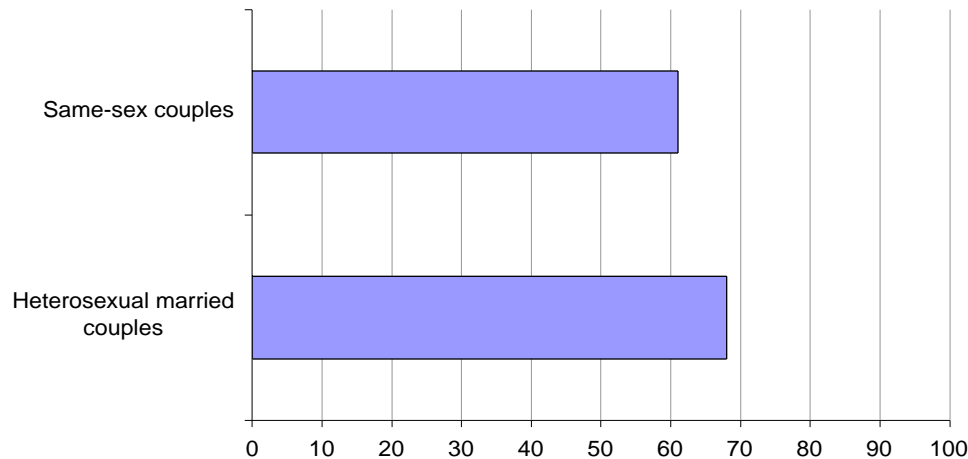
While 68 percent of married heterosexual senior couples who own their homes no longer owe mortgage payments, only 61 percent of same-sex senior couples find themselves in the same enviable situation.¹⁵ (See Figure 2).

As a result, surviving gay, lesbian and bisexual seniors may be at greater risk of losing their home than surviving married heterosexual seniors. This is due to the combined effects of the greater debt burden on their homes and the financial losses which stem from the lack of legal marriage recognition: namely, the tax burdens they face when they inherit a home or retirement plan from an unmarried partner, and the loss of Social Security survivor benefits.

Gay, lesbian and bisexual surviving partners who did not have their names on the title of the home the couple lived in (regardless of how long they lived in it) also are at risk of being forced out by their deceased partner's next of kin – a risk they would not face if they had been permitted to marry.

As mentioned above, gay, lesbian and bisexual partners also are at risk of losing their home when a partner enters a nursing home. Federal law permits a married spouse to remain in the couple's home when a husband or wife enters a nursing home with the assistance of Medicaid benefits. Unmarried couples, however, are not permitted this option. Instead, same-sex couples may be forced to choose between eligibility for the Medicaid coverage for the partner in need of nursing home care, and the right of the healthy partner to remain in his or her own home.

Figure 2
Portion with No Mortgage Payments Among Home Owners
Same-sex unmarried partners vs. Heterosexual married couples, Age 65+
Census 2000, Public Use Microdata Samples



CONCLUSION

Equality in access to marriage, and the many benefits and protections that go with it, would bring equity to the taxation of and benefits provided to all seniors, regardless of sexual orientation. Specifically, granting same-sex couples the right to marry would guarantee that the “widows” and “widowers” of same-sex couples would not be hit with undue estate tax and income tax burdens – nor deprived of Social Security survivor benefits – upon the death of a partner. Marriage equality also would decrease the risk of losing their homes that gay, lesbian and bisexual seniors now face when a partner enters a nursing home or dies.

More narrowly, a number of independent steps would need to be taken to bring equity to the treatment of gay, lesbian and bisexual seniors under law. Among them:

- U.S. Social Security law would need to be rewritten to ensure that survivor benefits are available to all Americans in committed relationships, regardless of sexual orientation.
- Federal tax law would need to be rewritten to ensure that the inheritance of retirement plans would be equalized for all eligible beneficiaries, including same-sex partners.
- Federal tax law would need to be rewritten to ensure that domestic partners would be made exempt from the imposition of estate taxes upon the inheritance of a home.
- Property laws would need to be revised to ensure that domestic partners would not be vulnerable to claims against the ownership of their home by their deceased partner’s next of kind.
- Medicaid law would need to be revised to ensure that same-sex partners be granted the right to remain in their own home, without surrendering access to Medicaid benefits, when a partner enters a nursing home.

DATA DESCRIPTION

Analyses use the Census 2000 Public Use Microdata Samples (PUMS) and a U.S. Census Bureau Special Tabulation. The 1% PUMS are used for analyses of heterosexual couples and the 5% PUMS are used for analyses of same-sex unmarried partners. Figures from the 1% PUMS are drawn from a sample of 109,558 heterosexual married couples with at least one partner age 65 or over and 187,697 individuals who are age 65 or older within these couples. Figures from the 5% PUMS are drawn from a sample of 4,074 same-sex unmarried partner couples with at least one partner age 65 or older and 6,752 individuals who are age 65 or older within these couples. County-level counts of seniors are from a U.S. Census Bureau Special Tabulation conducted for The Urban Institute and are reported in *The Gay and Lesbian Atlas* (Gates, G.J. and Ost J., Urban Institute Press, forthcoming 2004).

Top 50 Counties Where Same-sex Senior Couples (Aged 65 and Older) Live*

County	State	Total number of same-sex couples aged 65 or older	Rank	Number of same-sex couples aged 65 or older for ever 1,000 adults aged 65 or older	Rank
Los Angeles County	CA	3410	1	3.68	21
Cook County	IL	2190	2	3.47	34
Kings County**	NY	1440	3	5.09	5
Broward County	FL	1415	4	5.42	4
Miami-Dade County	FL	1265	5	4.21	13
Palm Beach County	FL	1155	6	4.41	8
San Diego County	CA	1135	7	3.62	25
Queens County	NY	1090	8	3.85	17
Riverside County	CA	1085	9	5.54	3
New York County	NY	1070	10	5.73	2
Maricopa County	AZ	1035	11	2.88	48
Philadelphia County	PA	940	12	4.40	10
Harris County	TX	915	13	3.62	24
Wayne County	MI	870	14	3.49	30
Orange County	CA	840	15	2.99	44
San Francisco County	CA	825	16	7.77	1
Pinellas County	FL	765	17	3.69	20
Cuyahoga County	OH	740	18	3.41	38
Suffolk County	NY	685	20	4.09	14
Nassau County	NY	685	19	3.41	37
Alameda County	CA	650	21	4.40	9
King County	WA	635	22	3.49	32
Dallas County	TX	625	23	3.49	31
Middlesex County	MA	620	24	3.31	40
Allegheny County	PA	615	25	2.69	49
Bronx County	NY	570	26	4.26	12
Clark County	NV	550	27	3.74	19
San Bernardino County	CA	500	28	3.41	36
Santa Clara County	CA	480	29	2.99	45
Westchester County	NY	450	30	3.49	33
Sacramento County	CA	435	31	3.20	41
Hillsborough County	FL	425	33	3.55	28
Bexar County	TX	425	32	2.94	47
Honolulu County	HI	420	35	3.57	27
Hartford County	CT	420	34	3.34	39
Ocean County	NJ	415	36	3.66	22
Fairfield County	CT	415	37	3.54	29
Pima County	AZ	410	38	3.43	35
Erie County	NY	405	39	2.68	50
Baltimore city	MD	400	41	4.66	6
Lee County	FL	400	40	3.57	26
Bergen County	NJ	400	42	2.97	46
Polk County	FL	395	43	4.45	7

Sarasota County	FL	390	45	3.80	18
Contra Costa County	CA	390	44	3.64	23
Jefferson County	AL	385	46	4.26	11
Tarrant County	TX	380	47	3.15	42
Essex County	NJ	375	48	3.97	16
New Haven County	CT	370	49	3.10	43
Orange County	FL	360	50	4.00	15

* Same-sex couples with one partner aged 65 or older.

** Counties in bold reflect those that appear in top 15 in both categories.

Top 50 Counties Where Same-sex Couples Aged 55 and Older Live*

County	State	Total number of same-sex couples aged 55 or older		Number of same-sex couples aged 55 or older for ever 1,000 adults aged 55 or older	
			Rank		Rank
Los Angeles County	CA	7540	1	4.65	17
Cook County	IL	4340	2	4.06	33
Kings County (Brooklyn)	NY	2845	3	5.88	8
New York County (Manhattan)	NY	2815	4	8.57	3
Broward County	FL	2560	5	6.43	6
Miami-Dade County	FL	2370	6	4.67	16
San Diego County	CA	2290	7	4.42	25
Riverside County	CA	2230	8	7.15	5
Queens County	NY	2135	9	4.45	23
Maricopa County	AZ	2130	10	3.55	45
San Francisco County	CA	2095	11	12.22	1
Harris County	TX	2095	12	4.26	26
Orange County	CA	1815	13	3.59	44
Palm Beach County	FL	1780	14	4.81	14
Philadelphia County	PA	1695	15	5.00	12
King County	WA	1655	16	5.12	11
Alameda County	CA	1610	17	6.18	7
Dallas County	TX	1500	18	4.51	20
Wayne County	MI	1425	19	3.48	47
Suffolk County	NY	1360	20	4.53	18
Pinellas County	FL	1295	21	4.26	27
Nassau County	NY	1250	23	3.83	38
Cuyahoga County	OH	1250	22	3.69	41
Middlesex County	MA	1220	24	3.90	37
Clark County	NV	1140	25	4.13	32
Bronx County	NY	1110	26	4.70	15
Santa Clara County	CA	1075	27	3.64	43
San Bernardino County	CA	1035	28	3.95	36
Allegheny County	PA	1015	29	2.93	50
Sacramento County	CA	965	30	4.19	28
District of Columbia	DC	915	31	7.65	4
Westchester County	NY	895	32	4.15	30
Bexar County	TX	875	33	3.51	46
Contra Costa County	CA	865	34	4.51	19
Pima County	AZ	865	35	4.47	22
Sonoma County	CA	860	36	8.77	2
Hillsborough County	FL	845	37	4.15	31
Fairfield County	CT	825	38	4.15	29
Hartford County	CT	810	39	3.98	35
Honolulu County	HI	785	40	4.05	34
Hennepin County	MN	775	41	3.72	40
Tarrant County	TX	775	42	3.44	48
Orange County	FL	760	43	4.85	13
Baltimore city	MD	750	44	5.34	10

Lee County	FL	740	45	4.44	24
Essex County	NJ	730	46	4.50	21
Suffolk County	MA	720	47	5.73	9
Bergen County	NJ	710	48	3.19	49
New Haven County	CT	700	49	3.66	42
Franklin County	OH	690	50	3.78	39

* Same-sex couples with one partner aged 55 or older.

Endnotes

¹ Of all same-sex couples, 11.8 percent include one senior, 65 years old or older; 9.4 percent include two seniors.

² Seventy-one percent of same-sex senior couples have lived together in the same house for five years or more.

³ Of all same-sex couples, 23.4 percent include a partner 55 years old or older; 18.6 percent are comprised of two people over 55.

⁴ This estimated difference is statistically significant, meaning that there is more than a 95 percent probability that the figures are actually different.

⁵ Heterosexual unmarried couples earn \$21,827 in combined retirement income.

⁶ For married heterosexual senior couples, there is a \$7,016 difference in Social Security incomes.

⁷ The 401(k) account balance figure is based on data from the Employee Benefit Research Institute (EBRI). According to a comprehensive data collection project, "401(k) Plan Account Balances, Asset Allocation, and Loan Activity in 2001," the average account balance for participants in their '60s with at least 30 years of tenure was \$162,042. See www.ebri.org/facts/0603fact.pdf

⁸ The income selected is based on median income on 2001 federal income tax returns as reported by the IRS, projected forward to 2003 assuming a 3 percent annual increase. See <http://www.irs.gov/taxstats/article/0,,id=102886,00.html>

⁹ The applicable marginal tax rates and calculation of federal tax liability are based on 2003 federal laws, assuming that the taxpayer claims the standard deduction and one exemption (with phase-out of the personal exemption included, as applicable).

¹⁰ The 401(k) account balance figure is based on the EBRI project cited in footnote 7, which found that the average 401(k) account balance was \$43,215.

¹¹ See footnote 9.

¹² The income selected is based on the breakpoint for the top 10 percent of adjusted gross income on 2001 federal income tax returns as reported by the IRS, projected forward to 2003 assuming a 3 percent annual increase. www.irs.gov/taxstats/article/0,,id=102886,00.html

¹³ See footnote 9.

¹⁴ The median value of homes owned by married senior couples is \$112,000. The median value of homes owned by all same-sex couples, regardless of age, is the same.

¹⁵ This estimated difference is statistically significant, meaning that there is more than a 95 percent probability that the figures are actually different.
