

Implementation of the Supreme Court's decision holding  
Section 3 of DOMA unconstitutional in *United States v. Windsor*

Updated September 4, 2013

**Department of Defense (DoD)**

- On September 3, 2013, DoD announced that has made the same benefits available to same-sex spouses that are available to opposite-sex spouses. DoD will continue its practice of recognizing all marriages that are valid in their place of celebration. Entitlements will be retroactive to June 26, 2013, the date of the *Windsor* decision. See [Secretary of Defense Memorandum](#) and [Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members](#).
- DoD has also announced a new policy, effective immediately, to authorize non-chargeable marriage leave where a service member is part of a same-sex couple and is assigned to a duty station located more than 100 miles from a U.S. state (or the District of Columbia) that allows same-sex couples to marry. Eligible service members stationed within the Continental United States may be granted up to 7 days of leave; those stationed outside of the Continental United States may be granted up to 10 days of leave. See [Secretary of Defense Memorandum](#) and [Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members](#).

**Internal Revenue Service (IRS)**

- IRS announced a Revenue Ruling adopting a state-of-celebration rule for recognizing marriages for all federal tax laws; interpreting the use of the term “husband and wife” in the Internal Revenue Code (“IRC”) to include same-sex married couples; and providing that this guidance will be given retroactive effect for taxpayers who wish to claim a refund, so long as such claim is not barred by the applicable statute of limitations. See [IRS Revenue Ruling](#) and [Frequently Asked Questions](#).

**Office of Personnel Management (OPM)**

- OPM has extended health insurance, life insurance, dental and vision insurance, long-term care insurance, and flexible spending accounts to all same-sex spouses and annuitants of federal employees, regardless of where the couple lives. See [Memorandum for Heads of Executive Departments and Agencies from OPM Acting Director Elaine Kaplan](#). See also [Benefits Administration Letter](#), [FEHB Program Carrier Letter](#), and [FEDVIP Carrier Letter](#).
- Health care benefits are now also available to same-sex spouses of employees of Indian tribes that participate in the Federal Employees Health Benefits (FEHB) program. See [Tribal Benefits Administration Letter](#).

- Retirees in same-sex marriages can elect survivor annuities for their spouses, and have two years to do so. See [Civil Service Retirement System and Federal Employees' Retirement System: Opportunity for Annuitants to Elect Survivor Annuity Benefits for Same-Sex Spouses](#), 78 FR 47,018 (Aug. 2, 2013).

### **Department of Homeland Security (DHS)**

- DHS, through U.S. Citizen and Immigration Services (USCIS), has announced that for purposes of immigration law, same-sex marriages will be treated exactly the same as opposite-sex marriages. USCIS generally looks to the place where the marriage was celebrated to determine the validity of the marriage, and will apply these same principles to same-sex marriages. U.S. citizens and lawful permanent residents can now file petitions to sponsor their same-sex spouses for family-based immigrant visas, and can file fiancé or fiancée petitions based on their engagement to a person of the same sex. And all other immigration benefits conditioned on the existence of a marriage or one's status as a spouse now include same-sex marriages. Examples include an alien seeking to accompany or follow his or her spouse who has been granted a family-sponsored immigrant visa, an employment-based visa, refugee status, or asylum. Same-sex marriages now, like opposite-sex marriages, reduce the residence period required for naturalization for aliens married to U.S. citizens. And whenever the immigration law conditions eligibility for discretionary waivers of certain inadmissibility grounds on marriage or status as a spouse, same-sex marriages will be treated exactly the same as opposite-sex marriages. See [USCIS, Same-Sex Marriages](#).
- USCIS is also reopening all previously submitted immigration petitions or applications denied solely because of Section 3 of DOMA. USCIS is making a concerted effort to identify and reopen petitions by U.S. citizens to adjust the immigration status of their same-sex spouses (I-130 petitions) denied solely based on Section 3 of DOMA, and requests that any individual who believes his or her petition or application should be reopened notify USCIS by March 31, 2014. No fee will be charged for these reopened petitions and applications. Additionally, if an individual's work authorization was denied or revoked based on the denial of a concurrently filed application or petition, the agency will reconsider the denial or revocation of the work authorization and will issue a new work authorization to the extent necessary. See [USCIS, Same-Sex Marriages](#).

### **Department of State**

- Secretary Kerry announced on August 2, 2013 that, effective immediately, U.S. embassies and consulates will adjudicate visa applications that are based on a same-sex marriage in the same way that they adjudicate applications for opposite gender spouses. This means that the same-sex spouse of a visa applicant coming to the U.S. for any purpose – including work, study, international exchange or as a legal immigrant – will be eligible for a derivative visa. Stepchildren acquired through same-sex marriage can also qualify as beneficiaries or for derivative status. See [U.S. Visas for Same-Sex Spouses](#); see also [Secretary Kerry Announcement on Visa Changes for Same-Sex Couples](#).

- The State Department has announced that certain retirement benefits available to Foreign Service members and annuitants, such as spousal survivor benefits, now apply to same-sex spouses in the same way they apply to opposite-sex spouses. More guidance is forthcoming. (Note: The retirement systems for State Department Civil Service employees are administered by OPM.)

### **Social Security Administration (SSA)**

- SSA has begun to process retirement benefit claims based on a same-sex marriage where the individual who paid into social security is domiciled at the time of the application, or while the claim is pending, in a state that recognizes his or her marriage. All claims pending on, or filed on or after, June 26, 2013, the date of the *Windsor* decision, are subject to these new instructions. See [Program Operation Manual System, Windsor Same-Sex Marriage Claims](#) and [Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on Payments to Same-Sex Couples](#).
- SSA is holding all other claims, actions, and appeals that implicate a same-sex marriage. See [Emergency Message 13022-REV](#). SSA has also issued a public statement encouraging individuals who believe they may be eligible for Social Security benefits to apply now, and stating that the agency will move swiftly to process claims once it has finalized instructions for its personnel implementing the *Windsor* decision. See [Update on the Supreme Court Decision Regarding the Defense of Marriage Act and Its Implications for Social Security Benefits](#).

### **Department of Health and Human Services**

- HHS issued a memo clarifying that all beneficiaries in private Medicare plans have access to equal coverage when it comes to care in a nursing home where their spouse lives. See [HHS Announces First Guidance Implementing Supreme Court's Decision On the Defense of Marriage Act](#)

### **Department of Labor (DOL)**

- DOL has updated its guidance on the Family and Medical Leave Act (FMLA) to make clear that an employee is eligible for leave to care for a same-sex spouse where the state in which the employee resides recognizes his or her marriage. See [Wage and Hour Division Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act](#).

### **Office of Government Ethics (OGE)**

- The Office of Government Ethics has issued a general guidance providing that all of the federal ethical obligations over which it has interpretative authority, such as financial disclosure and conflict of interest requirements for federal employees, will now apply to same-sex married couples (with the validity of their marriages based on the place of celebration) in the same manner in which these obligations apply to opposite-sex married

couples. *See* [Effect of the Supreme Court’s Decision in \*United States v. Windsor\* on the Executive Branch Ethics Program](#).

### **Federal Election Commission (FEC)**

- The Federal Election Commission has released two advisory opinions concluding that same-sex couples married under state law are “spouses” for purposes of FEC regulations. One advisory opinion, written in response to a request from the Democratic Senatorial Campaign Committee (DSSC), provides that joint contributions by a “spouse” include same-sex couples married under state law; that a Senate candidate who is legally married to a same-sex spouse may utilize jointly owned assets under the same conditions as a Senate candidate who is married to an opposite-sex spouse; and that same-sex spouses are covered by the term “families” for purposes of permitting a corporation or labor organization to allow a representative of a political party to address and ask for contributions in certain circumstances. *See* [Advisory Opinion 2013-06 \(DSSC\)](#). The second advisory opinion, written in response to a request from a former Senate candidate, provides that in the regulation governing joint contributions by spouses, 11 C.F.R. § 110.1(i), “spouse” includes same-sex couples married under state law. *See* [Advisory Opinion 2013-07 \(Winslow II\)](#).