

# AFTER DOMA

## WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

### Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- The ruling striking down DOMA will not be effective until 25 days from the decision. Even when effective, federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

## VETERAN'S SPOUSAL BENEFITS

There are two categories of veterans who receive benefits from the Department of Veterans Affairs: qualified non-retired veterans and retirees. Qualified veterans are those who meet eligibility requirements for specific benefits (usually related to time-in-service and discharge characterization). Retirees are those who served at least 20 years in the military and who formally retired from military service. Retirees receive benefits both from the Department of Defense (DOD) (see guidance on Military Spousal Benefits fact sheet for information related to these benefits) and the Department of Veterans Affairs (VA).

### WHO IS A VETERAN SPOUSE?

The law that governs veteran's benefits contains a DOMA-like provision defining spouse. According to the law, for these purposes, a spouse is "a person of the opposite sex who is a wife or husband." There is a similarly restrictive definition of "surviving spouse."

In light of the Supreme Court's ruling on DOMA, we believe that the definitions described above are constitutionally invalid and can no longer be enforced. This position is supported by the position that the Obama administration took in another DOMA challenge that also challenged the veteran's statutes. In that case, [the Attorney General wrote a letter to the Speaker of the House](#) informing the Speaker that the United States would not defend these provisions because the Attorney General viewed them, like DOMA, as violating the Equal Protection clause of the Fifth Amendment. See [http://sldn.3cdn.net/b43c938d6601df41b9\\_26m6bu2hc.pdf](http://sldn.3cdn.net/b43c938d6601df41b9_26m6bu2hc.pdf).

### WHICH MARRIAGES DOES THE DEPARTMENT OF VETERANS AFFAIRS CONSIDER VALID?

The statute that governs veteran's benefits has problematic provisions for determining when a marriage is valid. According to the law, a marriage is considered a marriage if it was "valid. . . according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued."

Because this determination of marriage validity comes from federal statute, action will likely be required by courts or by Congress. The better standard would be a "place of celebration" rule, so that spousal status is assessed according to the law of the state where one married or secured a spousal status. This is the standard DOD and the military use, where there is no statute specifying a place of residence rule. In our mobile society, it would make more sense for the federal government to recognize all marriages that were valid where entered. We are working to ensure that the federal government respects married couples wherever possible.

Unless a "place of celebration" rule is established for the VA, if a veteran and his or her spouse traveled from a state that would not recognize their marriage to marry in a state that allows same-sex couples to marry, and lived in a non-recognition state when their veteran's benefits

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders  
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

took effect, they would likely not be considered married for purposes of the VA. To help clarify, see the chart below.

If...	Then, for purposes of the VA, you are...
You lived in a recognition state when you got married and live in a recognition state when the benefits take effect	Married
You lived in a recognition state when you got married but live in a non- recognition state when the benefits take effect	Married
You lived in a non- recognition state when you got married (by traveling to a recognition state to get married) but live in a recognition state when the benefits take effect	Married
You lived in a non- recognition state when you got married (by traveling to a recognition state to get married) and continue to live in a non- recognition state when the benefits take effect	Likely Not married

There are many veterans who live in non- recognition states (e.g., Texas, Virginia) who traveled to recognition states to get married, but who still live in non- recognition states and will do so when the benefits take effect. Veterans and their spouses in this situation likely will still not qualify as being in valid marriages for purposes of the VA.

This would give rise to particularly troubling outcomes for retirees in this situation, who would normally get some of their benefits from the DOD and some from the VA. For those retirees, the DOD would recognize their marriage and provide benefits, but the VA would not.

### WHAT ARE THE SPOUSAL VETERANS BENEFITS?

If your marriage is respected by the VA, there are a number of important benefits that the VA offers to spouses or surviving spouses. Some of the most important are:

- Passing on GI Bill benefits**  
For more information, please visit [www.gibill.va.gov/benefits/post\\_911\\_gibill/transfer\\_of\\_benefits.html](http://www.gibill.va.gov/benefits/post_911_gibill/transfer_of_benefits.html)
- Veterans Health Administration healthcare (CHAMPVA)**  
For more information, please visit [www.va.gov/hac/forbeneficiaries/champva/champva.asp](http://www.va.gov/hac/forbeneficiaries/champva/champva.asp)
- Dependency and Indemnity Compensation**  
For more information, please visit [benefits.va.gov/COMPENSATION/types-dependency\\_and\\_indemnity.asp](http://benefits.va.gov/COMPENSATION/types-dependency_and_indemnity.asp)  
The relevant application form can be found here: [www.vba.va.gov/pubs/forms/VBA-21-534-ARE.pdf](http://www.vba.va.gov/pubs/forms/VBA-21-534-ARE.pdf)
- Dependent's Educational Assistance Program**  
For more information, please visit [www.gibill.va.gov/benefits/other\\_programs/dea.html](http://www.gibill.va.gov/benefits/other_programs/dea.html)  
The relevant application form can be found here: [www.vba.va.gov/pubs/forms/vba-22-5490-are.pdf](http://www.vba.va.gov/pubs/forms/vba-22-5490-are.pdf)

- VA Guaranteed Home Loan Program**  
For more information, please visit [www.benefits.va.gov/homeloans/](http://www.benefits.va.gov/homeloans/)  
For information on receiving a Certificate of Eligibility, please visit [www.benefits.va.gov/HOMELOANS/purchaseco\\_certificate.asp](http://www.benefits.va.gov/HOMELOANS/purchaseco_certificate.asp)
- Burial benefits**  
For more information, please visit [www.cem.va.gov/burial\\_benefits/](http://www.cem.va.gov/burial_benefits/) and [www.cem.va.gov/cem/burial\\_benefits/eligible.asp](http://www.cem.va.gov/cem/burial_benefits/eligible.asp)

### HOW DO I REGISTER?

All VA benefits require individual application. However, for every benefit, a valid marriage license or marriage certificate is sufficient to demonstrate a spousal relationship. (Other documentation will be required to demonstrate general eligibility, such as proof of veteran's service or a death certificate, in the case of surviving spouses.)

### WHAT ACTION DO I NEED TO TAKE?

With the Supreme Court's ruling, we believe that married veterans who lived in recognition states (states that either licensed or respected marriages of same-sex couples at the time of the marriage) when they got married or live in recognition states when the benefits take effect should qualify for VA spousal benefits for which they meet all other requirements.

If your application for a benefit is denied based on the VA's failure to recognize your marriage, please contact a legal organization to discuss the matter. For general information on appealing benefits determinations, please visit [www.bva.va.gov/](http://www.bva.va.gov/).

Veterans who lived in non-marriage states when they got married and continue to live in non-marriage states when the benefits take effect should monitor the Department of Veterans Affairs website to learn how the VA will address the likely limitation on marriage recognition.



## FOR MORE INFORMATION, CONTACT

**OUTSERVE-SLDN**  
[outserv-sldn.org](http://outserv-sldn.org)

**GAY & LESBIAN ADVOCATES & DEFENDERS**  
[glad.org](http://glad.org)

**AMERICAN CIVIL LIBERTIES UNION**  
[aclu.org/lgbt](http://aclu.org/lgbt)

**LAMBDA LEGAL**  
[lambdalegal.org](http://lambdalegal.org)

**NATIONAL CENTER FOR LESBIAN RIGHTS**  
[nclrights.org](http://nclrights.org)

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