

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.

MILITARY SPOUSAL BENEFITS

Service members receive only approximately 30% of their total compensation in the form of base pay. The remaining 70% of their compensation package comes in the form of allowances, in-kind benefits, and—in the case of retirees—deferred compensation. For service members who are married (or who have another qualified dependent), many of these allowances and benefits are increased, to account for the reality that the service member is providing for a family, instead of an individual. These increases are generous, and reflect the unique strains and challenges placed on a family with a member serving in the military.

Who is a military spouse?

For the active military, reserves, and National Guards, by statute a “spouse” is “a husband or wife as the case may be.” Then-Secretary of Defense Panetta said in a memo on February 11, 2013, that:

In the event that the Defense of Marriage Act is no longer applicable to the Department of Defense, it will be the policy of the Department to construe the words “spouse” and “marriage” without regard to sexual orientation, and married couples, irrespective of sexual orientation, and their dependents, will be granted full military benefits.

www.defense.gov/news/Same-SexBenefitsMemo.pdf

With the Supreme Court striking down DOMA as unconstitutional, it no longer applies to the Department of Defense (DOD) and we can expect the DOD to issue a formal statement that it will construe the statute definition of spouse to be inclusive, as laid out in Secretary Panetta's statement.

Which marriages does the military consider valid?

Generally, the military will consider a marriage valid if it was valid in the state where the marriage took place. A state-issued marriage certificate is normally all the evidence necessary to demonstrate that the marriage was considered valid by the state.

Marriages entered into in foreign countries to foreign nationals generally must be approved by the military service beforehand. If such a marriage is not approved beforehand, the service member must obtain a “recognition of marriage” from the military service. In general, no benefits will result from marriage entered into in a foreign country to a foreign national unless it was pre-approved by the service or ratified afterwards.

While a marriage may be valid according to state law, the military does not provide benefits—or will seek restitution for benefits already paid—for “sham” marriages entered into solely for the purposes of obtaining benefits. The military has aggressively prosecuted such cases in several instances.

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.

What happens if I move from a marriage state to a non-marriage state (or overseas)?

Because the military determines a marriage to be valid based on the law of the state where the marriage took place, it should not matter what state you lived in when you married, what state you move to after you marry, or where you are stationed around the world. Once your spouse is recognized by the military as your spouse, the laws of the state in which you live no longer play a role in whether you remain eligible for spousal benefits from the military.

How do I register for spousal benefits?

Eligibility for all military spousal benefits flows from a spouse's valid enrollment in the Defense Enrollment Eligibility Reporting System (DEERS). To add a spouse to DEERS, the service member must go to an ID Card office or DEERS office and present a valid marriage certificate, or in the case of a common law marriage, a determination from the Staff Judge Advocate (SJA) that the common law marriage is valid under state law.

For a list of documents required to add dependents to DEERS, please visit: www.dmdc.osd.mil/rsl/html/RequiredDocuments.html

What is the duty to report marriages?

Service members have a duty to report changes in their dependent status within 30 days. Under DOMA, marriages to a person of the same-sex did not have to be reported because the military could not recognize these marriages. Now that DOMA has been struck down, service members who are legally married under any states' laws must report the marriage. It is unclear when the 30-day deadline for reporting will begin, but it is best to report as soon as possible.

WHAT ARE THE BENEFITS MY SPOUSE CAN GET?

Once a spouse is enrolled in DEERS, he or she is eligible for a whole host of benefits. The most important benefits to most service members and their spouses are:

- Spousal Identification Card
- TRICARE medical insurance coverage
- Dependent-rate housing allowance
- Family separation allowance
- Ability to move off base to live with a spouse
- Command-sponsored visas
- Access to military installations and facilities, including: base; commissaries; exchanges; Morale, Welfare and Recreation (MWR) centers; Family Center programs
- Joint Duty Assignments
- Access to legal assistance

While it does not flow directly from DEERS enrollment, the spouses of service members may also invoke the protections of the Servicemembers Civil Relief Act (SCRA), which provides certain protections from civil actions against service members who are called to Active Duty. For more information on the SCRA, visit www.dmdc.osd.mil/appj/scra/welcome.xhtml.

What action do I need to take?

Couples who are married, regardless of whether you currently live in a state that recognizes your marriage, should proceed immediately to any DEERS office or ID Card office and report that you are married. You will need a copy of your marriage certificate.

Couples who are in state registered domestic partnerships or state civil unions, or couples who have no state legal status, have no mandatory requirement to report those relationships to the military.

What does the court's ruling mean for the military domestic partnership benefits extension?

On February 22, 2013, then-Secretary of Defense Panetta announced that certain benefits not blocked by DOMA would be made available to the same-sex domestic partners of service members. The benefits extension is scheduled to take effect between August 31, 2013 and October 1, 2013, with some news reports identifying the effective date as September 1, 2013. Any same-sex couple who meets the eligibility requirements can register as a domestic partner, regardless of whether the couple has any state-recognized relationship status. See www.defense.gov/news/Same-SexBenefitsMemo.pdf.

Recognition of a marriage provides many more benefits than the domestic partnership status established by DOD. A married couple will receive all the benefits that a domestic partnership couple would receive, but the domestic partnership couple will receive far fewer benefits than the married couple.

In the memorandum announcing the domestic partnership benefits extension, Secretary Panetta said "The benefits changes directed by this memorandum will be re-assessed" when DOMA no longer applies to the DOD "to determine whether other changes are needed or appropriate, to include whether unmarried same-sex domestic partnerships should be a basis for eligibility for benefits in the future."

Now that DOMA has been struck down, it remains to be seen whether DOD will continue to implement the domestic partnership benefits extension, or require all benefits to be conferred through state-recognized marital status.



FOR MORE INFORMATION, CONTACT

OUTSERVE-SLDN

outserv-sldn.org

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

LAMBDA LEGAL

lambdalegal.org

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

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.