

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.

SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED (SSI)

The Supplemental Security Income (SSI) program pays a modest cash benefit to people who are at least age 65 and meet financial limits or have severe disabilities and very limited income and resources. See www.ssa.gov/pgm/ssi.htm.

How does marital status matter for SSI purposes?

Being recognized as married generally makes it more difficult for someone to qualify for SSI when the couple is living together. A married couple living together where both spouses are at least age 65 or meet the Social Security Act disability standard must apply for SSI as a couple. The limit on allowable resources for a couple to be eligible for SSI is 50% higher than for an individual, and in most states, the limit on allowable income for a couple is also 50% higher than for an individual. Very few married couples will qualify.

If a married couple lives together, but only one spouse meets the age or disability standard, then that spouse must apply as an individual, but the income and resources of the ineligible spouse will be “deemed” to the spouse applying for SSI (i.e., considered to be income and resources of the spouse applying for SSI) under a formula set forth in the SSI regulations. Relatively few will qualify if they are subject to deeming.

If a married couple lives apart from each other, they will be treated the same as unmarried individuals for SSI purposes.

For more information, see

www.ssa.gov/policy/docs/issuepapers/ip2003-01.html.

Caution: For most couples, being married is not beneficial for SSI purposes. People receiving SSI should, if possible, consult an attorney who is knowledgeable about the SSI program before deciding to marry.

How is marital status determined for SSI?

The Social Security Act defines the rules for determining marital relationships for SSI recipients. See 42 U.S.C. § 1382c(d). Marital status is based under the statute on “appropriate State law,” and regulations further specify that the law of the state of domicile—where the couple principally lives—at the time of application should apply. Under additional statutory provisions, even if the marriage is not recognized by the state where the couple lives, the couple will nevertheless be considered married for SSI purposes if they can inherit personal property from the other without a will under the state’s law as would a spouse.

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 does this mean for a married same-sex couple who lives in a state that respects their marriage?

A married same-sex couple living in a state that respects their marriage should be regarded as married for SSI purposes, and the income and resources of both spouses would be taken into account to determine SSI eligibility and benefits.

What does this mean for a married same-sex couple who lives in a state that does not respect their marriage?

The answer is uncertain. The couple would not be regarded as married under the law of their state of domicile. But it is possible that the couple nevertheless could be determined to be “holding themselves out” as married to the community, and hence subject to the rules for married couples for federal SSI purposes. A section of the Social Security Act provides that even if there is no recognized marital relationship, if two individuals hold themselves out as “husband and wife” to the community in which they reside, they will be treated the same as a married couple for SSI eligibility purposes. See 42 U.S.C. 1382c(d)(2). Efforts may be made in non-recognition states to apply this “holding out” provision to same-sex partners in evaluating eligibility for SSI. Whether a couple is “holding out” as a couple is an intensely factual determination. The fact that the couple was married in another state or shares all expenses should not be decisive.

What does this mean for a same-sex couple who has a civil union or comprehensive domestic partnership and lives in a state that recognizes the status?

A couple in a civil union or registered domestic partnership in a state that recognizes their relationship will be treated as married if under the law of the state they would be treated the same as married individuals for purpose of intestate succession of personal property (i.e., they would inherit from each other under state law without a will).

Seek counsel from an attorney in your state for advice about your eligibility for SSI benefits and consequences to you of entering into a marriage, civil union, domestic partnership, or other potentially legally recognized relationship.



FOR MORE INFORMATION, CONTACT

LAMBDA LEGAL

lambdalegal.org

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

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