



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.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

What is TANF?

Temporary Assistance for Needy Families (TANF) is a federally-funded program run by states that provides limited cash assistance to extremely low-income parents and their children. States may have different names for this program, but it can be called public assistance, temporary assistance, general assistance or cash assistance. This program is extremely limited and provides small amounts of assistance to parents who have little or no income and very few assets for limited periods of time. It also provides some assistance directly for their children. Since the passage of Welfare Reform in the mid-90s, there are severe restrictions on the program, which vary state by state, and many extremely low-income parents do not qualify.

There is a requirement that adult recipients of TANF generally must work or participate in a welfare-to-work program, although the requirements vary widely from state to state. In many states, being eligible for TANF may also make you eligible for free child care, although child care may not actually be available.

Who qualifies for TANF?

TANF is run and designed by states, so each state has different rules for who qualifies and what aid is available. Generally, TANF may be available to pregnant women, legally-recognized parents and their children, and in some circumstances, stepparents or legally-recognized relatives caring for children. This means that in states where same-sex parents are not recognized under the law, non-biological parents may not be able to qualify for TANF. However, there are other assistance programs for relatives and non-relative caregivers who are caring for a child (but only if there is no legal parent raising the child). Some of these other programs may actually provide better aid than TANF.

Who will be recognized as married for TANF purposes?

There are federal rules that restrict how states run this program.

- **If your state recognizes your marriage:** Now that Section 3 of the federal Defense of Marriage Act (DOMA) has been overturned, every state that recognizes marriages between same-sex couples will recognize their marriages for all TANF purposes.
- **If you are in a civil union or registered domestic partnership and your state recognizes your relationship:** You may be treated as married for TANF purposes.
- **If you live in a state that doesn't recognize your relationship:** You will probably not be recognized as married for TANF purposes.

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.

How will being married affect my eligibility for TANF?

If you and your partner or spouse are both legally recognized as parents, whether or not you are married should not affect your eligibility. If one spouse is not a legally-recognized parent, the income of a stepparent may be considered for TANF eligibility depending on your state, so in that circumstance, whether your marriage is recognized can directly affect your eligibility for TANF. Also, whether you are recognized as married to your partner, and whether you are both recognized as legal parents, impacts who must participate in a welfare-to-work program and whether you can receive child care assistance.

Many states also have various marriage incentive programs designed to encourage parents to marry each other, but these are focused on encouraging biological parents to marry.

CAUTION: For many couples, being married is not beneficial for TANF purposes. People receiving TANF should speak to an attorney if possible about their benefits before deciding to marry.

I have been told that I have to identify the biological father of my child to receive TANF. Is this true?

Federal law currently requires parents who receive TANF to “cooperate” in efforts to identify the biological father of their child – the federal law requiring this is written in gendered terms and assumes that a biological father must be identified. Parents who have conceived using a known sperm donor may be required to identify their sperm donor as the father of their child in order to receive benefits. If you live in a state with laws that say a sperm donor is not a parent (and you followed those laws) or if a court has already ruled that your donor is not a parent, you should not have to identify him as a father – although you may have to push the agency to recognize this. But, if your donor could be a legal parent under your state laws, you may be required to identify him as a legal father. Identifying your sperm donor as a father can have severe results – it can mean that he will be recognized as the legal second parent of your child for all purposes under the law, including the ability to seek custody or visitation, and can prevent a non-biological parent who is raising the child from being recognized. If you are facing this situation, please contact one of the legal groups listed at the end of this publication for more information.

How can I apply for TANF?

The application process will be different in each state. Usually, there will be a county office where you can apply, or you may be able to apply online.



FOR MORE INFORMATION, CONTACT

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

LAMBDA LEGAL

lambdalegal.org

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