



The Supreme Court Ruling on DOMA: What Has Happened Since

The Supreme Court's ruling in *United States v. Windsor* striking down Section 3 of the discriminatory Defense of Marriage Act (DOMA) was an enormous victory for loving, married couples and their families. As a supplement to the list of subject areas addressed in the fact sheets prepared by the LGBT advocacy groups (as listed in the "What It Means" sheet), here are links to some of the analyses, guidance, and recommendations that the Obama Administration and federal agencies have provided in the months since the Court's decision.

Federal Taxes

IRS Notice 2013-61, issued Sept. 23, 2013, provides guidance re refunds and overpayments of FICA taxes and employment taxes concerning benefits and payments for same-sex spouses. The Treasury Dept. and IRS have adopted the "place of celebration" rule.

[IR-2013-72](#), Treasury and IRS Announce That All Legal Same-Sex Marriages Will Be Recognized For Federal Tax Purposes; Ruling Provides Certainty, Benefits and Protections Under Federal Tax Law for Same-Sex Married Couples (last updated Sept. 30, 2013),

<http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples>

Treasury Department Aug. 29, 2013 press release with links:

<http://www.treasury.gov/press-center/press-releases/Pages/jl2153.aspx>

Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law (updated as of Nov. 20, 2013),

<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>

Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions (updated as of Sept. 19, 2013),

<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>

Rev. Rul. 2013-17, <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>

ISSUES:

1. Whether, for Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex, if the individuals are lawfully married under state law, and whether, for those same purposes, the term “marriage” includes such a marriage between individuals of the same sex.

2. Whether, for Federal tax purposes, the Internal Revenue Service (Service) recognizes a marriage of same-sex individuals validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the state in which they are domiciled does not recognize the validity of same-sex marriages.

3. Whether, for Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and whether, for those same purposes, the term “marriage” includes such relationships.

Social Security and Family Protections

On August 9, 2013, the Acting Commissioner of the Social Security Administration (SSA) announced that SSA had started processing some retirement spousal claims for same-sex couples. Information about benefits for same-sex couples and family members is available here: <http://ssa.gov/doma/>

SSA’s FAQs for Same-Sex Couples are posted here:

<https://faq.ssa.gov/link/portal/34011/34019/ArticleFolder/407/Same-Sex-Couples>

Private Employment Issues and Benefits

On Sept. 18, 2013, the Department of Labor issued [Technical Release No. 2013-04](#), "Guidance to Employee Benefit Plans on the Definition of 'Spouse' and 'Marriage' under ERISA and the Supreme Court's Decision in *United States v. Windsor*." See <http://www.dol.gov/ebsa/newsroom/tr13-04.html>

Family and Medical Leave Act for Non-Federal Employees

The Department of Labor has issued additional guidance post-*Windsor* on the Family and Medical Leave Act: [Fact Sheet #28F](#): "Qualifying Reasons for Leave under the Family and Medical Leave Act." See <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm>

Benefits and Protections for Civilian Federal Employees and their Spouses

See Office of Personnel Management (OPM), *Benefits Administration Letter re Coverage of Same-Sex Spouses* (July 17, 2013), <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf>

The OPM also has issued specific guidance on Family and Medical Leave Act (FMLA) [protections for same-sex spouses](#). See <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5834>.

The Office of Government Ethics also has issued guidance for federal employees with a same-sex spouse, [OGE, LA-13-10](#): "Effect of the Supreme Court's Decision in *United States v. Windsor* on the Executive Branch Ethics Program." See <http://www.oge.gov/OGE-Advisories/Legal-Advisories/LA-13-10--Effect-of-the-Supreme-Court-s-Decision-in-United-States-v--Windsor-on-the-Executive-Branch-Ethics-Program/>

Military Spousal Benefits

In Release No: 581-13 (dated August 14, 2013), the Department of Defense issued [information on implementation](#) of the *Windsor* decision for same-sex military spouses. The Release announced that the Department will provide equal benefits to same-sex spouses of uniformed service members and Department of Defense civilian employees regardless of whether their state of residence permits them to marry. The Release explained, "We recognize that same-sex military couples who are not stationed in a jurisdiction that permits same-sex marriage would have to travel to another jurisdiction to marry. That is why the department will implement policies to allow military personnel in such a relationship non-chargeable leave for the purpose of travelling to a jurisdiction where such a marriage may occur. This will provide accelerated access to the full range of benefits offered to married military couples throughout the department, and help level the playing field between opposite-sex and same-sex couples seeking to be married. It is available here:

<http://www.defense.gov/releases/release.aspx?releaseid=16203>

Additional information is available here: <http://www.defense.gov/home/features/2013/docs/Extending-Benefits-to-Same-Sex-Spouses-of-Military-Members.pdf>

And here: <http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf>

Veteran's Spousal Benefits

On September 4, 2013, U.S. Attorney General Eric Holder announced that President Obama has directed the Executive Branch to take steps allowing for same-sex spouses of military veterans to collect federal benefits. See <http://www.justice.gov/opa/pr/2013/September/13-ag-991.html>

Immigration

Guidance and frequently asked questions provided by the Department of Homeland Security are available here: <http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>

After the *Windsor* decision, former Secretary of Homeland Security Janet Napolitano issued the following statement: "After last week's decision by the Supreme Court holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, President Obama directed federal departments to ensure the decision and its implication for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. To that end, effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse."

Bankruptcy

Attorney General Eric Holder issued a “Memorandum to All Department Employees” on February 11, 2014 instructing that same-sex married couples are to be treated the same as other married couples to the fullest extent permitted by federal law. Bankruptcy is one of the areas specifically called out for this approach. Other areas include:

- invocations of marital privileges in civil and criminal cases presenting federal questions;
- federal benefit and compensation programs administered by the Department of Justice that implicate marital status, such as the Public Safety Officers' Benefits Program, the September 11th Victim Compensation Fund, and the Radiation Exposure Compensation Program;
- visitation with and next-of-kin notification regarding inmates in federal prisons; and
- Bureau of Alcohol, Tobacco, Firearms, and Explosives treatment of same-sex surviving spouses for purposes of carrying on a deceased spouse's licensed firearms or explosives business.

See Department Policy on Ensuring Equal Treatment for Same-Sex Married Couples, available at <http://www.justice.gov/iso/opa/resources/ss-married-couples-ag-memo.pdf>

Medicaid

On September 17, 2013, the Department of Health & Human Services issued SHO # 13-006, guidance for State Health Officials and Medicaid Directors on implications of the *Windsor* ruling for Medicaid and the Children's Health Program (CHIP). It explains that, “because Section 3 of DOMA no longer controls the definition of marriage or spouse under the federal framework for state Medicaid and CHIP programs, DOMA is no longer a bar to states recognizing same-sex marriages in Medicaid or CHIP.”

Among other things, SHO # 13-006 explains further that:

[A]s a general matter, for purposes of the Medicaid and CHIP programs, we believe that it is appropriate to recognize same-sex marriages that (1) are recognized by the state or territory in which the applicant or beneficiary resides, or (2) were celebrated in accordance with the laws of any state, territory, or foreign jurisdiction. However, in view of the unique federal-state relationship that characterizes the Medicaid and CHIP programs, we interpret section 1902(e)(14)(G), which incorporates section 36B(d)(2), to permit states and territories to apply their own choice-of-law rules in deciding what law governs the determination of whether a couple is lawfully married; that is, we are permitting states and territories to adopt a different same-sex marriage recognition policy if they do not recognize same-sex marriages consistent with their laws. Under this approach, with respect to Medicaid and CHIP, a state is permitted and encouraged, but not required, to recognize same-sex couples who are legally married under the laws of the jurisdiction in which the marriage was celebrated as spouses for purposes of Medicaid and CHIP.

More information is at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf>

Medicare Spousal Protections

On August 29, 2013, the Department of Health & Human Services issued the [guidance memo](#) "Impact of *United States v. Windsor* on Skilled Nursing Facility Benefits for Advantage Enrollees," which advises that, "effective immediately, in accordance with the Supreme Court's ruling in *United States v. Windsor*, Medicare Advantage (MA) organizations must cover services in a skilled nursing facility (SNF) in which a validly married same sex spouse resides to the extent that they would be required to cover the services if an opposite sex spouse resided in the SNF.

More information is available at http://www.cms.gov/Medicare/Health-Plans/HealthPlansGenInfo/Downloads/SNF_Benefits_Post_Windsor.pdf

Supplemental Security Income for Aged, Blind, and Disabled (SSI)

In January 2014, the Social Security Administration issued agency [instructions](#) for processing claims of same-sex spouses for Supplemental Security Income. *See* Social Security Administration, Program Operations Manual System (POMS), GN 00210.800 Same-Sex Marriages - Supplemental Security Income (as of 01/09/2014). More information is at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210800>

Temporary Assistance for Needy Families (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.

The Free Application for Federal Student Aid (FAFSA)

This guidance addresses the Free Application for Federal Student Aid (FAFSA).