



Office of the Attorney General
Washington, D. C. 20530

June 20, 2014

MEMORANDUM TO THE PRESIDENT

FROM: THE ATTORNEY GENERAL 
SUBJECT: Implementation of *United States v. Windsor*

The Supreme Court's historic decision in *United States v. Windsor* was consistent with our values as a nation and a triumph for equal protection under the law for all Americans. Section 3 of the Defense of Marriage Act (DOMA) had prohibited the federal government from recognizing same-sex married couples as married for federal purposes, infusing the administration of over 1,000 laws with unconstitutional discrimination. At your direction, the Department of Justice immediately began working with other federal agencies to make the promise of the *Windsor* decision a reality – to identify every federal law, rule, policy, and practice in which marital status is a relevant consideration, expunge Section 3's discriminatory effect, and ensure that committed and loving married couples throughout the country would receive equal treatment by their federal government regardless of their sexual orientation.

I am pleased to report that agencies across the federal government have implemented the *Windsor* decision to treat married same-sex couples the same as married opposite-sex couples for the benefits and obligations for which marriage is relevant, to the greatest extent possible under the law.

BACKGROUND

Section 3 of DOMA demeaned and disadvantaged same-sex married couples by denying them the benefits and responsibilities that flow from federal recognition of their marriages. In 2011, consistent with my recommendation, you made the legal determination that classifications based on sexual orientation must be subjected to heightened constitutional scrutiny, and that under this standard Section 3 was unconstitutional. You instructed Justice Department attorneys not to defend DOMA Section 3 against equal protection challenges, although the Executive Branch would continue to enforce Section 3 pending a definitive judicial branch determination against its constitutionality.

In *Windsor*, the Supreme Court agreed that DOMA Section 3 was unconstitutional, holding that “no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment.” 133 S. Ct. 2675, 2696 (2013).

Although the decision invalidated only one section of one statute, it had far-reaching consequences. Section 3 applied to “over 1,000 federal laws in which marital or spousal status is addressed as a matter of federal law,” and “[b]y its great reach, [] touche[d] many aspects of married and family life, from the mundane to the profound.” *Id.* at 2683, 2694. As a result, eliminating Section 3’s injurious effects on same-sex married couples required an unprecedented effort spanning nearly every federal agency.

THE IMPLEMENTATION PROCESS

On June 26, 2013, the day of the Court’s decision, you directed me to work with other members of your Cabinet to ensure that *Windsor* was implemented both swiftly and smoothly across the government. Under the leadership of Stuart F. Delery, Assistant Attorney General for the Department’s Civil Division, and drawing on expertise from across the Department, a team of lawyers carried out this mission.

This process has been a true partnership between Department lawyers and our agency colleagues. Together, we canvassed the government to identify all of the ways in which federal law touches married life. Each agency made its own policy choices; the Department’s role has been to help agencies identify legal issues and evaluate whether an agency’s proposed course of action reflects a reasonable interpretation of the governing statutes, regulations, and the *Windsor* decision itself.

By working in parallel with all agencies at the same time, the Department adhered to your instruction that the implementation process should be both swift and smooth. To make sure the process was swift, we reviewed and cleared agency actions on a rolling basis, guided both by the priorities the agencies identified and an assessment of how long it would take to resolve legal questions. The Department worked with agencies to tackle the straightforward issues quickly, particularly if they concerned programs with broad effect; some benefits were provided within days of the Supreme Court’s decision. But there were also many complex questions that required careful consideration, and as a result, some agency actions took longer to finalize.

To make sure the process was smooth, the Department drew on all of its expertise to ensure that the agencies’ actions had firm legal support and that legal issues affecting multiple agencies were assessed using a consistent legal approach. In addition, the Department worked with our agency colleagues to make sure that changes were implemented not just in policy statements announced by agency headquarters, but in offices across the country where citizens seek benefits.

RESULTS

At your direction, the policy of this Administration has been to recognize lawful same-sex marriages as broadly as possible, to ensure equal treatment for all members of society regardless of sexual orientation. After careful legal analysis, agencies across the government have interpreted the programs, statutes, regulations, and policies that implicate marital status to extend the benefits and obligations of marriage to same-sex married couples wherever permitted by law. For the wide array of affected programs, agencies have produced guidance to facilitate

the prompt and orderly processing of claims and to educate the public on how to access the benefits to which they are entitled.

Agencies have overwhelmingly chosen to recognize marriages as valid based on the law of the jurisdiction where the marriage took place (the “place of celebration”), regardless of where the couple currently resides (the “place of domicile”). Given that a majority of states still do not allow or recognize same-sex marriages, this issue often determines whether the federal government can provide marriage-dependent benefits to all same-sex married couples, including those who now live in non-recognition states. A number of agencies had longstanding policies that look to the place of celebration, regardless of where the applicant resides, and have simply extended these policies to same-sex married couples. Many agencies had not previously established a standard for marriage recognition, and almost all have now adopted place of celebration rule for program-specific reasons.

Two agencies are prohibited by federal statute from adopting a place of celebration rule for certain programs of critical importance to millions of Americans. The Social Security Administration and the Department of Veterans Affairs are required by law to confer certain marriage-related benefits based on the law of the state in which the married couple resides or resided, preventing the extension of benefits to same-sex married couples living in states that do not allow or recognize same-sex marriages. The Administration should continue to support legislative action to adopt a uniform place of celebration rule, such as through the pending Respect for Marriage bills introduced by Senator Dianne Feinstein and Congressman Jerrold Nadler, the Social Security and Marriage Equality Act introduced by Senators Mark Udall and Patty Murray, and the Veterans Affairs’ amendment proposed by Senators Mark Udall and Jeanne Shaheen earlier this year. We will work closely with Congress to ensure that veterans and elderly and disabled Americans can obtain for themselves or their spouses the essential benefits they have earned no matter where they live.

The impact of the *Windsor* decision, and the government-wide implementation efforts, cannot be overstated. The Internal Revenue Service permits same-sex couples to file joint tax returns. The Department of Defense permits same-sex spouses of military service members to receive the same benefits as opposite-sex spouses. Our immigration system permits citizens and lawful permanent residents to sponsor same-sex spouses for immigration benefits. Same-sex spouses of federal employees are eligible for health insurance and other benefits. And the Department of Justice will recognize the validity of same-sex marriages in courtrooms and proceedings in which its lawyers appear to the greatest extent permitted under the law. The attached appendix describes these and many other agency actions in more detail.

The implementation of the *Windsor* decision across the entire federal government is an accomplishment that reflects countless hours of hard work, cooperation, and coordination across agencies. As additional issues arise, we will continue to work together to uphold this Administration’s fundamental commitment to equal treatment for all Americans, and to extend this fundamental equality to all Americans.

Attachment

HIGHLIGHTS OF AGENCY IMPLEMENTATION
UNITED STATES V. WINDSOR

Department of Agriculture (USDA)

- USDA issued guidance in several of the programs it operates stating that legally married same-sex couples will be treated as married individuals. This policy applies to individuals whose marriages were performed in a jurisdiction where same-sex marriages are legal, regardless of the individuals' state of residency. For example, USDA issued a memorandum determining that all terms referring to marital status contained in the various policies and procedures of the Federal Crop Insurance Corporation shall be administered in a manner that ensures same-sex spouses are treated exactly the same as spouses of the opposite sex. See [USDA Risk Management Agency Administrator Memo](#).
- USDA also issued guidance that legally married same-sex couples will be treated as married individuals and part of the same household for Supplemental Nutrition Assistance Program (SNAP) eligibility purposes if the marriage is valid in the place of celebration. See [USDA Food and Nutrition Service Memo](#).

Department of Defense (DoD)

- On September 3, 2013, the Department of Defense announced that the same benefits that are available to opposite-sex spouses are available to same-sex spouses. DoD will continue its practice of recognizing all marriages that are valid in their place of celebration. Entitlements are retroactive to June 26, 2013, the date of the *Windsor* decision. On December 13, 2013, DoD announced that all eligible dependents of service members and retirees, including same-sex spouses, are now able to obtain Department of Defense ID cards at ID card facilities on all DoD bases worldwide. DoD formalized this announcement by issuing an interim rule regarding the provision of ID cards on January 6, 2014. See [Secretary's December 13, 2013, Announcement](#), [ID Card Interim Rule](#), [Secretary of Defense Memorandum](#) and [Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members](#).
- DoD also announced a new policy to authorize an administrative absence when a service member is part of a couple that desires to get married, but is assigned to a duty station located more than 100 miles from a U.S. state, the District of Columbia, or other jurisdiction that allows the couple to marry. Eligible service members stationed within the Continental United States may be granted up to 7 days of leave; those stationed outside of the Continental United States may be granted up to 10 days of leave. See [Secretary of Defense Memorandum](#), [Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members](#) and [Clarifying Policy](#).

Department of Education (ED)

- The Department of Education issued guidance on the effect of the *Windsor* decision on federal student financial aid programs. The guidance provides that the terms "spouse"

and “marriage” include same-sex married couples. Further, ED will recognize a student or a parent as legally married if the couple was legally married in any jurisdiction that recognizes the marriage, regardless of where the student or couple lives, or where the student is attending school. The guidance also provides instructions for the 2013-2014 FAFSA, the federal student aid form, with an option for submitting a correction if the student was unable to respond to a marital status question as “married” due to Section 3 of DOMA. The guidance also provides instructions for the 2014-2015 FAFSA and subsequent years. See [Education Guidance](#) and [Education Announcement that All Legal Same-Sex Marriages Will Be Recognized for Federal Financial Aid Purposes](#).

Department of Health and Human Services (HHS)

- HHS released guidance advising State Health Officials and Medicaid Directors of the implications of the *Windsor* decision for Medicaid and the Children’s Health Insurance Program (CHIP). For Medicaid and CHIP populations for which eligibility is determined using modified adjusted gross income, the guidance provides that states are permitted and encouraged, but not required, to recognize same-sex couples who are legally married under the laws of the jurisdiction where the marriage was celebrated as spouses for purposes of Medicaid and CHIP. In view of the unique federal-state relationship that characterizes the Medicaid and CHIP programs, the agency is 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. See [Medicaid and CHIP Guidance](#). In addition, HHS issued a final rule regarding the Basic Health Program (BHP) administration. BHP is an optional program for states that choose to provide Medicaid-like coverage to individuals with household incomes of 133% to 200% of the federal poverty level. In return, the Federal Government gives the state 95% of what the Federal Government would otherwise have spent on premium tax credits and cost-sharing subsidies. HHS also provided clarification on whether legally married same-sex couples will be recognized as married for purposes of BHP eligibility. BHP is required to use the same definitions as are applicable under the Internal Revenue Code, thus HHS clarified that the same-sex marriage recognition policy adopted by the IRS is applicable. The guidance ensures that household income includes the income of same-sex married spouses. See [BHP Final Rule](#).
- HHS issued guidance clarifying that the ability of a Medicare beneficiary enrolled in a Medicare Advantage plan to receive care in the same nursing home where his or her spouse resides applies equally to same-sex and opposite-sex married couples, regardless of the state where the couple lives. See [Memo on Impact of United States v. Windsor on Skilled Nursing Facility Benefits for Medicare Advantage Enrollees](#).
- The National Institutes of Health (NIH) released guidance for its Clinical Center providing that the Clinical Center will define “spouse” to include same-sex married individuals. The guidance further clarifies that a marriage will be recognized if it is recognized by the state or jurisdiction where the marriage occurred or by state or jurisdiction where the couple currently resides. See [NIH Clinical Center Guidance](#).

- The Bureau of Health Workforce (formerly the Bureau of Clinician Recruitment and Service) of the Health Resources and Services Administration issued guidance for four of its clinician recruitment programs: the National Health Service Corps Loan Repayment Program, the NURSE Corps Programs, and the Native Hawaiian Health Scholarship Program. These programs provide scholarships or repay educational loans for student or health care providers who agree to practice in areas of the country that need them most. The guidance clarifies that same-sex couples legally married in jurisdictions that recognize their marriages will be treated as married for purposes of the programs. *See* [NURSE Corps Loan Repayment Program Guidance](#), [NURSE Corps Scholarship Program Guidance](#), [National Health Service Corps Loan Repayment Program Guidance](#), and [Native Hawaiian Health Scholarship Program Guidance](#).
- HHS published guidance implementing section 2702 of the Public Health Service Act (PHS Act), which requires that health insurance issuers offering non-grandfathered health insurance coverage in group or individual markets (including the Affordable Insurance Exchanges) guarantee the availability of coverage unless one or more exceptions applies. The guidance clarifies that if insurance companies choose to offer spousal coverage, insurance companies cannot decline to offer the same coverage to same-sex spouses, ensuring that insurance companies will not be permitted to discriminate against married same-sex spouses when offering coverage. *See* [PHS Act Final Rule](#), [Frequently Asked Questions on Coverage of Same-Sex Spouses](#), and [Blog Post](#).
- HHS released guidance to advise Health Insurance Marketplaces established by the Affordable Care Act on the impact of the IRS Revenue Ruling on the eligibility of same-sex spouses for advance payments of the premium tax credit and cost-sharing reductions. The guidance establishes that same-sex spouses will be treated in the same manner as opposite-sex spouses for these purposes. *See* [Health Insurance Marketplaces Guidance](#).
- HHS has issued guidance for a number of grant programs, including the following grants:
 - The Administration for Community Living (ACL) released guidance explaining that grantees administering ACL programs should recognize as family members individuals of the same sex who are lawfully married under the law of a state, territory, or foreign jurisdiction. *See* [Guidance for ACL Grantees](#).
 - HHS released guidance for Ryan White HIV/AIDS Program grantees handling same-sex marriages. The guidance encourages such grantees to consider aligning their financial eligibility requirements with the new Affordable Care Act modified adjusted gross income-based methodologies in order to reduce the burden on clients and to support coordination with the eligibility determination processes for insurance affordability programs. *See* [Ryan White HIV/AIDS Program Guidance](#).
 - The Office of Adolescent Health, within the Office of the Assistant Secretary for Health, released guidance for Pregnancy Assistance Fund grantees. This guidance

encourages grantees to afford same-sex marriages the same services and support as opposite-sex marriages to the greatest extent possible, regardless of the state of residence or the state in which the program operates. See [Pregnancy Assistance Fund Program Guidance](#).

- The Food and Drug Administration (FDA) issued guidance related to the meaning of “spouse” and “family” in FDA's regulations. Consistent with HHS policy, FDA will interpret the terms "spouse" and "family" to include same-sex spouses. Further, FDA will recognize any same-sex marriage valid in the state, territory or foreign nation where it took place. See [FDA Questions and Answers: Guidance for Industry, Consumers, and FDA Staff](#).
- HHS published a notice in the Federal Register regarding income levels for a “low-income family” for the purpose of determining eligibility for programs that provide health professions and nursing training for individuals from disadvantaged backgrounds in Health Resources and Service Administration programs. The notice explains that an individual’s household income includes the income of a same-sex spouse. See [Notice of Updates to “Low Income Levels” for Health Professions and Nursing Programs](#).
- HHS updated its website providing information on Medicare and same-sex marriage. The website encourages those in, or a surviving spouse of, a same-sex marriage, to apply for Medicare. See [Medicare Website Notice](#) and [HHS Website Notice](#)
- HHS issued guidance in the form of FAQs regarding the implications of the *Windsor* decision on the physician self-referral prohibition in section 1877 of the Social Security Act and on the exclusion authority in section 1128(b)(8) of the Social Security Act. Both FAQs address the definition of “Immediate Family Member of a Physician.” An immediate family member of a physician includes the lawfully married same-sex spouse of a physician and family members that result from the lawful marriage of same-sex individuals. See [Physician Self-Referral Prohibition FAQ](#) and [Exclusion Authority FAQ](#).
- The Centers for Medicare and Medicaid Services (CMS) issued guidance for all Program of All-Inclusive Care for the Elderly (PACE) Organizations. The guidance advises PACE organizations that CMS interprets the word “family” for purposes of PACE to include same-sex couples who are lawfully married under the law of a state, territory, or foreign jurisdiction, regardless of the state in which the couple resides. See [PACE Organizations Guidance](#).

Department of Homeland Security (DHS)

- DHS, through U.S. Citizen and Immigration Services (USCIS), announced that for purposes of immigration law, same-sex marriages will be treated exactly the same as opposite-sex marriages. USCIS generally looks to the place where the marriage was celebrated to determine the validity of the marriage, and will apply these same principles to same-sex marriages. U.S. citizens and lawful permanent residents can now file petitions to sponsor their same-sex spouses for family-based immigrant visas, and can file

fiancé or fiancée petitions based on their engagement to a person of the same sex. All other immigration benefits conditioned on the existence of a marriage or one's status as a spouse now include same-sex marriages. Examples include an alien seeking to accompany or follow his or her spouse who has been granted a family-sponsored immigrant visa, an employment-based visa, refugee status, or asylum. Same-sex marriages, like opposite-sex marriages, reduce the residence period required for naturalization for aliens married to U.S. citizens. Further, whenever immigration law conditions eligibility for discretionary waivers of certain inadmissibility grounds on marriage or status as a spouse, same-sex marriages will be treated exactly the same as opposite-sex marriages. DHS has also issued FAQs speaking to a variety of specific circumstances potentially affecting same-sex married couples. See [USCIS, Same-Sex Marriages](#).

- USCIS is also reopening all previously submitted immigration petitions or applications denied solely because of Section 3 of DOMA. USCIS is making a concerted effort to identify and reopen petitions (I-130 petitions) by U.S. citizens to adjust the immigration status of their same-sex spouses denied solely based on Section 3 of DOMA, and requested that any individual who believes his or her petition or application should be reopened notify USCIS by March 31, 2014. No fee is charged for these reopened petitions and applications. Additionally, if an individual's work authorization was denied or revoked based on the denial of a concurrently filed application or petition, the agency will reconsider the denial or revocation of the work authorization and will issue a new work authorization to the extent necessary. See [USCIS, Same-Sex Marriages](#).

Department of Justice (DOJ)

- The Attorney General issued a policy memorandum regarding equal treatment for same-sex married couples. The memorandum directs DOJ personnel to recognize lawful same-sex marriages for the purpose of statutes, regulations, and policies enforced, administered, or interpreted by the Department. Under this policy, the Department will take the position in legal proceedings that same-sex spouses of individuals should have the same legal rights as all other spouses – including the right to decline to give testimony that might violate the marital privilege, and the right in bankruptcy cases to file jointly. DOJ will recognize such marriages as valid based on the jurisdiction where the marriage was celebrated. See [DOJ Memo Regarding Department Policy](#) and [Attorney General Remarks](#).
- The Public Safety Officers' Benefits Program (PSOB) is amending the regulation that implements the PSOB Act and associated statutes. The final rule will amend the regulation to change the definition of "spouse." The PSOB Act and associated statutes generally provide financial support to certain public safety officers, or their survivors and families, when such officers die, or become permanently and totally disabled, as a result of line-of-duty injuries, or when they die of heart attacks or strokes sustained within statutorily-specified timeframes of engaging or participating in certain line-of-duty activity. See [PSOB Notice of Proposed Rulemaking](#).

- The United States Trustee Program (USTP) issued guidance instructing USTP personnel to apply the Bankruptcy Code and Bankruptcy Rules to same-sex married couples in the same manner they are applied to opposite-sex married couples, and to interpret references to marital status in the Code and Rules to cover individuals lawfully married under any jurisdiction with the legal authority to sanction marriages. See [USTP Consumer Information Website](#) and [FAQ](#).
- The September 11th Victim Compensation Fund (VCF) and the Radiation Exposure Compensation Program (RECA Program) issued guidance clarifying that they will recognize same-sex marriages valid in the place where they were celebrated, regardless of where the married individuals reside, to the extent consistent with law. See [VCF FAQ 1.26](#) and [RECA Notice: Clarification of Definition after the Supreme Court’s Decision in *United States v. Windsor*](#).
- The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) made clear that it will treat same-sex surviving spouses in the same manner as opposite-sex surviving spouses for purposes of carrying on a deceased spouse's licensed firearms or explosives business. See [ATF Q&A on Succession of a License by a Same-Sex Spouse](#).

Department of Labor (DOL)

- DOL issued guidance on the meaning of “spouse” and “marriage” as these terms appear in the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code that the Department interprets. The guidance provides that “marriage” and “spouse” include same-sex marriages and individuals in same-sex marriages, respectively, in cases when the marriage is recognized as a marriage under any state law, regardless of where the couple resides. See [Guidance to Employee Benefit Plans on the Definition of “Spouse” and “Marriage” under ERISA](#).
- DOL issued a bulletin regarding the administration of benefits under the Federal Employees’ Compensation Act (FECA) available to spouses and surviving spouses of federal employees. The agency will interpret FECA to cover same-sex married couples in the same manner as opposite-sex married couples. DOL will follow its longstanding practice of recognizing the validity of a marriage for FECA purposes based on the law of the jurisdiction where the marriage took place. See [FECA Bulletin 14-01](#) and [Office of Workers’ Compensation Programs Announcement](#).
- DOL issued a notice of proposed rulemaking on the Family and Medical Leave Act (FMLA) to provide that an employee is eligible for leave to care for a same-sex spouse regardless of the employee’s state of residence. DOL previously updated its guidance on the FMLA to make clear that an employee is eligible for leave to care for a same-sex spouse where the state in which the employee resides recognizes his or her marriage. See [Wage and Hour Division Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act](#), [FMLA PowerPoint \(Slide 12\)](#), [WHD Field Operations Handbook Chapter 39d03\(d\)\(1\) \(p. 23 of PDF\)](#), and [FMLA elaws Advisor](#).

- DOL issued a bulletin regarding the administration of benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) available to surviving spouses of eligible Department of Energy nuclear weapons workers. The agency will interpret EEOICPA to cover same-sex married couples in the same manner as opposite-sex married couples. DOL will follow its longstanding practice of recognizing the validity of a marriage for FECA purposes based on the law of the jurisdiction where the marriage took place. See [EEOICPA Circular No. 14-06](#).
- DOL prepared a bulletin regarding the administration of benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA). The agency will interpret the LHWCA to cover same-sex married couples in the same manner as opposite-sex married couples, recognizing any marriage that is valid under the law of any state. See [LHWCA Bulletin No. 14-04](#).
- DOL issued guidance on the application of the Federal Unemployment Tax Act (FUTA) to same-sex married couples. FUTA does not require the payment of unemployment taxes on work performed for a spouse. The agency's guidance confirms that this rule applies to same-sex married couples in the same way as to opposite-sex married couples. See [UIPL 14-14](#).
- DOL issued an advisory regarding workforce grants administered by the Employment and Training Administration (ETA), including grants under the Workforce Investment Act of 1998 (WIA). The advisory strongly encourages, but does not require, states, territories, and Indian tribes receiving ETA grants to recognize all marriages that are valid in the state of celebration. The advisory requires all other grantees to recognize all marriages that are valid in the state of celebration. See [TEGL 26-13](#). Likewise, DOL has issued an advisory strongly encouraging the states that carry out the Trade Adjustment Act (TAA) to recognize all marriages that are valid in the state of celebration. See [TEGL 27-13](#).

Department of State

- The Department of State announced that U.S. embassies and consulates will adjudicate visa applications that are based on a same-sex marriage in the same way that they adjudicate applications for opposite-sex spouses. This means that the same-sex spouse of a visa applicant coming to the U.S. for any purpose – including work, study, international exchange, or as a legal immigrant – is eligible for a derivative visa. Stepchildren acquired through same-sex marriage can also qualify as beneficiaries or for derivative status. See [U.S. Visas for Same-Sex Spouses](#) and [Secretary Kerry Announcement on Visa Changes for Same-Sex Couples](#).
- State has made and is in the process of making revisions to the language of the Foreign Affairs Manual to account for same-sex marriages in accordance with the *Windsor* decision. See [Foreign Affairs Manual](#).

Department of Veterans Affairs (VA)

- VA's Office of General Counsel (OGC) issued an opinion analyzing who may be considered the "spouse" or "surviving spouse" of a Veteran (and therefore eligible for dependency benefits) under the place of residence recognition rule of 38 U.S.C. § 103(c). The opinion holds that, consistent with section 103(c), VA will recognize for purpose of applicable benefits those same-sex marriages that are recognized by the law of the place of residence of either spouse at the time of the marriage, or by the law of the place of residence of either spouse at the time the claimant became eligible for benefits. OGC also issued an opinion determining the date from which benefits based on a same-sex marriage are payable: claims open and on direct review as of September 4, 2013 (the date of the President's non-enforcement directive) will be given retroactive effect. New or reopened claims within one year will receive an effective date of September 4, 2013, if to do so would be to the claimant's benefit.
- The Veterans Benefits Administration (VBA) released guidance to its claims personnel nationwide regarding procedures for evaluating Veterans' applications for certain marriage-based benefits (dependency claims, survivors pension, DIC, education, home loan guaranty, vocational rehabilitation, insurance) that could be impacted by 38 U.S.C. § 103(c). VBA will inform claimants of the 103(c) standard through updated form instructions, and by providing claimants a link to VA's website (containing information about marriage recognition) so that they may verify their eligibility. VBA will apply the same level of scrutiny to all Veterans' marriages, regardless of whether they are same-sex or opposite-sex marriages. Consistent with 38 U.S.C. § 5124(a) and 38 C.F.R. § 3.204(a), VBA will generally accept a claimant's statement that he or she is married and eligible for benefits under 103(c). The exact same procedures apply for claimants in opposite-sex marriages and same-sex marriages.
- The National Cemetery Administration (NCA) issued a policy memorandum from the Deputy Under Secretary for Field Programs addressing burial benefits for same-sex married couples. NCA will inform claimants about marriage recognition and the 103(c) standard by providing links to VA's and NCA's webpages, and through outreach to funeral home directors. NCA will apply the same level of scrutiny to all Veterans' marriages, regardless of whether they are same-sex or opposite-sex marriages. Like VBA, NCA will continue to rely on claimants' assertions of spousal relationship for the purpose of determining eligibility for burial and memorial benefits. NCA will also accept previous VA determinations that a Veteran's marriage is recognized for VA benefit purposes.
- The Veterans Health Administration (VHA) issued a memorandum from the Acting Deputy Secretary for Health for Operations and Management directing that VHA revise its application forms to explain the 103(c) standard, and to provide claimants a link to VA's website (containing information about marriage recognition), so that they may verify their eligibility for benefits. VHA will apply the same level of scrutiny to all Veterans' marriages, regardless of whether they are same-sex or opposite-sex marriages. Like VBA and NCA, VHA will continue to rely on claimants' assertions of spousal

relationship for the purpose of determining eligibility. Eligibility for the civilian dependent health program (CHAMPVA) will be based on marriage determinations made by VBA.

- The Acting Secretary of Veterans Affairs signed a policy decision memorandum that he would exercise the discretionary authority (provided by statute, 38 U.S.C. § 2402(a)(6)) to designate individuals as eligible for burial in a national cemetery on a case-by-case basis, when there is evidence of a “committed relationship” between a Veteran and the otherwise ineligible individual. This standard is more inclusive of the range of relationships a Veteran may be in and will allow for burial of those same-sex spouses otherwise ineligible for interment in a national cemetery due to the 103(c) limitation.
- VA promulgated a rule to streamline delivery of benefits. Among other things, the rule automates payment of the federal stipend authorized to cover funeral/burial costs to a deceased Veteran’s “eligible surviving spouse.” In order to provide this benefit to same-sex spouses of Veterans who resided in non-recognition states at the time of their marriage or claim (and therefore do not meet the 103(c) standard) the rule permits payment to the “survivor of a legal union.”
- VA issued a proposed rule to amend its fiduciary activity regulations. The rule includes a new definition of “spouse” to include any husband or wife whose marriage meets the requirements of 38 U.S.C. § 103(c), including common law marriages and same-sex marriages. *See* [VA Proposed Rule](#).

Federal Election Commission (FEC)

- FEC has released two advisory opinions concluding that same-sex couples married under state law are “spouses” for purposes of FEC regulations. One advisory opinion, written in response to a request from the Democratic Senatorial Campaign Committee (DSCC), provides that the FEC regulation governing joint contributions by a “spouse,” 11 C.F.R. § 110.1(i), applies to same-sex couples married under state law; that a Senate candidate who is legally married to a same-sex spouse may utilize jointly owned assets under the same conditions as a Senate candidate who is married to an opposite-sex spouse; and that same-sex spouses are covered by the term “families” for purposes of permitting a corporation or labor organization to allow a representative of a political party to address and ask for contributions in certain circumstances. *See* [Advisory Opinion 2013-06 \(DSCC\)](#). The second advisory opinion, written in response to a request from a former Senate candidate, also held that the term “spouse” in 11 C.F.R. § 110.1(i) includes same-sex couples married under state law. *See* [Advisory Opinion 2013-07 \(Winslow II\)](#).

Federal Retirement Thrift Investment Board (FRTIB)

- FRTIB issued an interim final rule with request for comments regarding its administration of the Thrift Savings Plan (TSP). The interim rule provides that the FRTIB will look to the law of the jurisdiction of celebration to determine whether a TSP

participant is married. See [FRTIB Interim Rule Regarding Implementation of US v. Windsor](#).

General Services Agency (GSA)

- GSA submitted to the Federal Register for publication a proposed rule that would clarify the definitions of “marriage” and “spouse” for purposes of federal employee travel and relocation benefits to include same-sex marriages and spouses. This rule also amends the definition of domestic partnership to apply only to individuals in such a relationship who certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

Internal Revenue Service (IRS)

- IRS issued a Revenue Ruling making clear that, for all federal tax purposes, it will recognize a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. The Revenue Ruling also determined that the terms “spouse,” “husband and wife,” “husband,” and “wife” as used in the Internal Revenue Code include an individual married to a person of the same sex if the individuals are lawfully married under state law, and that the term “marriage” in the Code includes such a marriage between individuals of the same sex. See [IRS Revenue Ruling 2013-17](#), [Frequently Asked Questions](#), and [Frequently Asked Questions for Same-Sex Domestic Partners](#).
- IRS issued a notice providing guidance for employers and employees to make claims for refunds or adjustments of overpayments of employment taxes with respect to benefits (such as health benefits) provided to same-sex spouses, as well as wages paid to someone who is employed by their same-sex spouse. The notice also provides special administrative procedures to reduce filing and reporting burdens on employers to correct certain overpayments of employment taxes for 2013 and prior years. See [IRS Notice 2013-61](#).
- IRS issued a notice addressing how the rules for cafeteria plans, flexible spending accounts, and health savings accounts apply to individuals with same-sex spouses. The notice permits changes to elections for same-sex married couples during the 2013 plan year. Typically, taxpayers are not permitted to change their pre-tax elections under a cafeteria plan until the following year. Additionally, the notice clarifies that limits on contributions to flexible spending accounts and health savings accounts apply to same-sex married couples. See [IRS Notice 2014-1](#) and [Treasury Blog Post](#).
- IRS issued guidance on the application of the *Windsor* decision on qualified retirement plans. The guidance asserts that qualified retirement plan operations must reflect the outcome of the *Windsor* decision as of June 26, 2013. The guidance further clarifies that a retirement plan will not be treated as failing to meet the qualified plan requirements solely because the plan did not recognize the same-sex spouse of a participant as a spouse

before June 26, 2013. See [IRS Notice 2014-19](#), [Frequently Asked Questions](#), and [IRS Blog Post](#).

- IRS issued a revenue procedure making available to certain taxpayers an automatic extension of time until December 31, 2014, without the need for a ruling request or user fee, to elect portability of a deceased spouse's unused transfer tax exclusion to the surviving spouse. The taxpayers eligible for this extension are the estates of decedents who died in 2011 through 2013, who were U.S. citizens or residents with a surviving spouse, who did not have sufficient assets to require the filing of an estate tax return, who did not timely file an estate tax return, and who satisfy the procedural requirements listed in the revenue procedure. Thus, this group of eligible taxpayers may include the estate of a decedent married to a spouse of the same sex for whom portability was not available prior to the *Windsor* decision. See [Revenue Procedure 2014-18](#).

Office of Government Ethics (OGE)

- OGE issued a general guidance providing that all of the federal ethical provisions over which it has interpretative authority, such as financial disclosure and conflict of interest requirements for federal employees, will now apply to same-sex married couples (with the validity of their marriages based on the place of celebration) in the same manner in which these provisions apply to opposite-sex married couples. See [Effect of the Supreme Court's Decision in United States v. Windsor on the Executive Branch Ethics Program](#).

Office of Personnel Management (OPM)

- On June 28, 2013, OPM announced that it had extended health insurance, life insurance, dental and vision insurance, long-term care insurance, and flexible spending accounts to all same-sex spouses and annuitants of federal employees, regardless of where the couple lives. See [Memorandum for Heads of Executive Departments and Agencies from OPM Acting Director Elaine Kaplan](#). See also [Benefits Administration Letter](#), [Federal Employees Health Benefit Program Carrier Letter](#), and [Federal Employees Dental and Vision Insurance Program Carrier Letter](#).
- OPM also announced that health care benefits are available to same-sex spouses of employees of Native American tribes that participate in the Federal Employees Health Benefits (FEHB) Program. See [Tribal Benefits Administration Letter](#).
- OPM issued a final rule to amend the FEHB regulations regarding coverage for children up to age 26. The regulations allow children of same-sex domestic partners living in states that do not allow same-sex couples to marry to be covered as family members under the FEHB and the Federal Employees Dental and Vision Insurance Program (FEDVIP). This benefit is limited to children of same-sex domestic partners who certify that they would marry but for the failure of their state of residence to permit same-sex marriage. See [OPM FEHB and FEDVIP Expanding Coverage Rule](#).

- OPM provided notice of a 2-year opportunity for annuitants who are in legal same-sex marriages to elect survivor annuities for their spouses under the Civil Service Retirement System and Federal Employees' Retirement System. The agency will recognize marriages based on the state of celebration. *See* [Civil Service Retirement System and Federal Employees' Retirement System; Opportunity for Annuitants to Elect Survivor Annuity Benefits for Same-Sex Spouses, 78 FR 47018 \(Aug. 2, 2013\)](#). OPM has begun the process of working with surviving spouses of federal employees and annuitants who died prior to the Windsor decision to ensure that these widows and widowers receive the benefits to which they would have otherwise been entitled had DOMA not prohibited OPM from recognizing their marriages.
- OPM issued a notice of proposed rulemaking regarding FMLA coverage of same-sex spouses. The proposed rule would state that the term "spouse" in OPM's FMLA regulation is defined as a partner in any legally recognized marriage, regardless of the federal employee's state of residency. OPM previously issued a memorandum directing that "spouse," as used in OPM's current FMLA regulation, includes same-sex spouses regardless of the federal employee's state of residency. The guidance is effective as of June 26, 2013, and permits employees who took otherwise-qualifying leave to care for a same-sex spouse between June 26, 2013, and the date of the guidance to re-designate such time of as FMLA leave. *See* [Memorandum from OPM Acting Director Regarding FMLA Coverage of Same-Sex Spouses](#).

Peace Corps

- The Peace Corps has begun to accept applications from same-sex married couples who wish to serve together as volunteers overseas on the same basis as opposite sex married couples. The Peace Corps has also begun to accept applications from domestic partners who wish to serve together, regardless of whether they are same-sex domestic partners or opposite-sex domestic partners. Domestic partners are required to sign an affidavit before leaving for service to verify their relationship. *See* [Peace Corps Same-Sex Couples FAQs](#) and [Peace Corps Announces New Service Opportunity for Same-Sex Couples](#).

Pension Benefit Guaranty Corporation (PBGC)

- PBGC revised its policy regarding marriage requirements. As the statutory trustee of terminated pension plans, it had pre-existing policy guidance for establishing the existence of a marital relationship for purposes of entitlement to benefits in plans administered by PBGC. The revisions to PBGC's policies provide that the agency will recognize same-sex marriages under the same rules applicable to opposite-sex marriages, including following its longstanding place of celebration rule for recognizing the validity of a marriage. *See* [PBGC Blog: Defining Marriage along with Your Defined Benefit and Effect on PBGC Benefits of the Supreme Court's Decision on Same-Sex Marriage](#).

Social Security Administration (SSA)

- SSA is processing retirement benefit claims based on a same-sex marriage when the individual who paid into social security is domiciled at the time of the application, or while the claim is pending, in a state that recognizes his or her marriage. All claims pending on, or filed on or after, June 26, 2013, the date of the *Windsor* decision, are subject to these new instructions. See [Program Operations Manual System, Same-Sex Marriage – Benefits for Aged Spouses](#) and [Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on Payments to Same-Sex Couples](#).
- SSA released guidance for processing surviving spouses' claims and appeals involving same-sex marriages, including Medicare-only claims, when the individual who paid into social security was domiciled at the time of his or her death in a state that recognized his or her marriage. These instructions include procedures for approving, denying, or holding claims and appeals for benefits based on a ceremonial same-sex marriage. SSA also cleared guidance on providing lump-sum death benefits to some surviving same-sex spouses. See [Program Operations Manual System, Surviving Spouses](#) and [Program Operations Manual System, Lump-Sum Death Payments](#).
- SSA issued guidance for processing claims involving a non-marital relationship, such as a civil union, domestic partnership, or reciprocal beneficiary relationship. The guidance provides that SSA will recognize a claimant as married if state law allows the claimant to inherit from his or her partner on the same terms as a spouse could inherit.
- SSA issued guidance instructing field offices to process Supplemental Security Income (SSI) initial claims, appeals, and post-eligibility actions when an SSI claimant is in a same-sex marriage. Field offices will be able to process all SSI claims for applicants and beneficiaries in same-sex marriages or other same-sex relationships, and will treat such applicants and beneficiaries as married for purposes of calculating SSI benefits if they live in states that recognize same-sex marriage. Given that SSI is a means-tested program of last resort, SSA will consider the income and resources of the recipient and his or her spouse when determining both eligibility for the program and the monthly payment amount. See [SSA POMS Supplemental Security Income](#).
- SSA is encouraging individuals who believe they may be entitled to Social Security benefits based on a same-sex marriage or a legal same-sex relationship other than marriage to apply for benefits now. See [Frequently Asked Questions, Supreme Court decision about Defense of Marriage Act](#).
- SSA released guidance for interviewing individuals with claims involving same-sex relationships, stating the agency's policy to provide meaningful access to all of its programs, provide sensitive service to all individuals, and treat individuals with dignity and respect. See [Program Operations Manual System, Interviewing Individuals with Claims Involving Same-Sex Relationships](#).

- SSA released guidance on how to process claims that involve a same-sex marriage entered into a foreign jurisdiction. The guidance also provides instructions for obtaining a legal opinion on the validity of the foreign same-sex marriage. See [Program Operations Manual System, Foreign Marriages](#).