

Social Security, Post-DOMA: Effects on the LGBT Communities



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Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration for Community Living/ Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources



Presenter – Hilary Meyer

- Director of National Programs at Services & Advocacy for GLBT Elders (SAGE).
- In this position, Meyer oversees projects such as SAGEWorks, SAGE's workforce development program, and SAGE's National Resource Center on LGBT Aging, the country's only resource center focused on improving the quality of services and supports offered to lesbian, gay, bisexual and transgender older adults nationwide.
- The Resource Center was seed funded by a historic grant from the U.S. Department of Health and Human Services (HHS) and the Administration on Aging (AoA), and created by SAGE in partnership with 14 national organizations.
- Meyer provides leadership and oversight for the national programs and the activities of its staff and partner organizations; guides content and tools development; and, provides cultural competency trainings, media interviews and thought leadership on a number of issues related to LGBT aging.



Presenter – Karen L. Loewy



- Senior Staff Attorney for Lambda Legal, the oldest and largest national legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV.
- Ms. Loewy is involved in all aspects of Lambda Legal's impact litigation, policy advocacy and public education, with particular emphasis on issues affecting LGBT and HIV-positive seniors.
- Ms. Loewy is working to develop and expand Lambda Legal's work addressing the legal needs of LGBT and HIV-affected older adults.
- She works collaboratively with local and national aging organizations to advance policies that protect the rights of the LGBT and HIV-positive aging community.
- She speaks publicly on LGBT and HIV aging issues in areas that include life planning, access to health care, and housing.



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Presenter – Aaron Tax

- Director of Federal Government Relations for Services & Advocacy for GLBT Elders (SAGE), where he advocates for LGBT-inclusive federal aging policies that account for the unique needs of LGBT older adults.
- Until June 2011, Aaron served as the Legal Director at Servicemembers Legal Defense Network (SLDN), the leading organization challenging “Don’t Ask, Don’t Tell” (DADT) in Congress and in the courts.
- He started there as a staff attorney in 2006, and for nearly five years at SLDN, he took part in a multifaceted approach to advancing the civil rights of LGBT servicemembers through law, policy, outreach, and education. As the Legal Director, Aaron was responsible for running the legal services program at SLDN, the only organization providing free legal services to service members impacted by DADT and related forms of discrimination, including those who are HIV positive and/or transgender.



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Director of National
Programs

Karen L. Loewy, Lambda Legal
Senior Attorney and
Seniors Program Strategist

Aaron Tax, SAGE
Director of Federal
Government Relations



Origins of DOMA

1993: Concern that Hawaii might allow same-sex couples to marry and that other states and federal government might have to recognize them

1996: The So-Called DOMA Passed

§ 1: Short Title

§ 2: State Recognition Not Required

§ 3: Federal Definition of Marriage: "In determining the meaning of any [federal law] the word 'marriage' means only a legal union between one man and woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex..."



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United States v. Windsor



In 2007, after a 40 year relationship, Edith Windsor and Thea Spyer marry in Canada. When Spyer dies in 2009 and leaves her estate to Windsor, Windsor pays **\$363,053** of federal estate tax because she is not eligible for the tax exemption for surviving spouses as a result of DOMA.

U.S. Supreme Court rules § 3 of DOMA unconstitutional:

- ✓ DOMA violates liberty and equal protection guarantees
- ✓ The purpose and effect of DOMA is to impose a “disadvantage, a separate status, and so a stigma” upon married same-sex couples.



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United States v. Windsor

“DOMA undermines both the public and private significance of state sanctioned same-sex marriages; for it tell those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the State has sought to dignify. And it humiliates ten of thousands of children now being raised by same-sex couples.”

-Justice Kennedy writing for the majority



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United States v. Windsor

Practical Effects:

- ✓ Allows married same-sex couples *in equality states* access to over 1,000 tangible federal benefits;
- ✓ Permits married same-sex couples in non-recognition states access to some federal benefits;
- ✓ Does **NOT** require non-recognition states to permit same-sex couples to marry or recognize their out-of-state marriages, although provides a powerful tool for advocates



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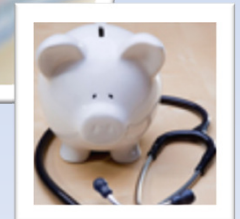
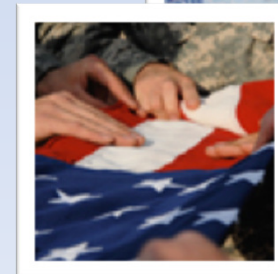
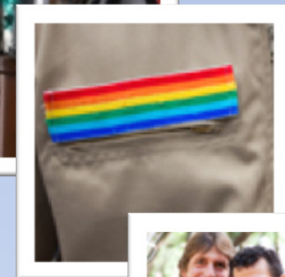
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United States v. Windsor

- ✓ Federal Taxes
- ✓ Immigration
- ✓ Social Security
- ✓ Medicaid and Medicare
- ✓ Military and Veterans Spousal Benefits
- ✓ Federal Employees Benefits
- ✓ TANF and more...



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Federal Benefits

- DOJ coordinating “across the board” agency review of all federal laws.
- Two main marriage recognition rules for federal benefits programs:

“Place of Celebration” = program recognizes legally married same-sex couples no matter where they live

“Place of Domicile” = program recognizes legally married same-sex couples only in states that also recognize their marriage



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Social Security, SSI

- No final decision, but usually looks to place of domicile.
- Possible that civil unions and registered domestic partnerships (RDPs) will be recognized along with legal marriages.
- SSA is now processing social security spousal claims in marriage equality jurisdictions.
- Spouses in other states encouraged to apply for benefits now to preserve claims, but processing on hold pending final determination.



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Social Security, SSI

- Social security spousal benefits include:
 - ✓ Retirement benefits
 - ✓ Disability benefits
 - ✓ Lump-sum death benefit
 - ✓ Surviving spouse benefit
- For SSI, being recognized as married generally makes it more difficult to qualify, as both spouses' incomes and resources will be considered.
- More information available at <http://ssa.gov/doma/>



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Medicare

- Program run by HHS/CMS, administered by SSA
- For most purposes, place of celebration applies, though some aspects of the program are controlled by the SSA definition.
- Couples with civil unions or registered domestic partnerships are not recognized as spouses.
- Information for same-sex spouses can be found at <http://medicare.gov/sign-up-change-plans/same-sex-marriage.html>



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Medicare

- Marriage affects eligibility for:
 - ✓ No-premium Part A based on spouse's work history
 - ✓ Penalty-free late enrollment in Parts B & D for those on spouse's employee health insurance
 - ✓ Special enrollment periods
 - ✓ Combining spousal income to determine premium amounts, programs to assist with Medicare costs
- Procedures have been developed to roll back some late enrollment penalties caused by DOMA, and to reduce some Part A premiums.



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Policy Change in the Months/Years Ahead

- Administrative Change
 - ✓ What can SSA do on its own?
- Legislative Change
 - ✓ What can Congress force SSA to do?
- Change through the Judiciary
 - ✓ What can the Judiciary do?



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Administrative Change

- The SSA Statute:
 - ✓ Place of Domicile v. Place of Celebration
 - ✓ What does the statute say (or appear to say)?
 - ✓ Does SSA have Discretion?
 - ✓ Precedent
 - ✓ The low hanging fruit:
 - ✓ CUs and RDPs
 - ✓ Who makes this change and how does it a happen?



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Legislative Change

- Social Security and Marriage Equality (SAME) Act of 2014
 - ✓ Senators Murray (D WA) and Udall (D CO)
 - ✓ Introduced May 8, 2014
 - ✓ Goal: to ensure all same-sex spouses receive equal treatment under the Social Security Act when applying for Social Security benefits, regardless of where they live (place of celebration).
 - ✓ Prospects?



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Legislative Change

- Respect for Marriage Act
 - ✓ Introduced June 26, 2013
 - ✓ Sen. Dianne Feinstein (D CA): S. 1236
 - ✓ Reps. Jerrold Nadler (D N.Y) and Ileana Ros-Lehtinen (R FL): HR 2523
 - ✓ Amends DOMA to repeal provision that prohibited a state, territory, possession, or Indian tribe from being required to recognize any public act, record, or judicial proceeding of any other state, territory, possession, or tribe respecting a same sex marriage.
 - ✓ Place of Celebration
 - ✓ Removes the definition of "spouse" (currently, person of the opposite sex who is a husband or a wife).
 - ✓ Prospects?



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Change through the Judiciary

- Seventeen states and the District of Columbia with marriage equality (FTM)
 - ✓ CA, CT, DE, HI, IA, IL, ME, MD, MA, MN, NH, NJ, NM, NY, RI, VT, and WA
- 72 Cases in 31 states/territories (FTM)
- Cases in Federal Appeals Courts (FTM)
 - ✓ Kentucky, Michigan, Nevada, Ohio, Oklahoma, Tennessee, Texas, Utah, and Virginia.
- Supreme court could rule in the next few years



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Resources

Lambda Legal: www.lambdalegal.org

Lambda Legal works to achieve full recognition of the civil rights of LGBT people and those with HIV through impact litigation, education and public policy work. For information and referrals, contact our Help Desk at www.lambdalegal.org/help

Post-DOMA fact sheets: www.lambdalegal.org/publications/after-doma

Fact sheets produced jointly by a group of national LGBT organizations to provide information about the demise of DOMA. Also available in Spanish.

Services & Advocacy for GLBT Elders (SAGE): www.sageusa.org

SAGE is the oldest and largest organization dedicated to improving the lives of LGBT older adults.

SAGE's National Resource Center on LGBT Aging: www.lgbtagingcenter.org

The Resource Center provides a website clearinghouse of information, training options and technical assistance.



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LGBT ORGANIZATIONS FACT SHEET SERIES:
AFTER DOMA
WHAT IT MEANS FOR YOU

The Supreme Court Ruling on the Defense of Marriage Act: What it Means

The Supreme Court's historic ruling striking down Section 3 of the discriminatory Defense of Marriage Act (DOMA) is an enormous victory for loving, married couples and their families, and affirms that they deserve equal treatment under the law. [Read the introductory FAQ.](#)



Private Employment Issues and Benefits

This Guidance addresses some of the marriage-related issues regarding employer-sponsored retirement plans and health insurance benefits that are regulated by federal law.



Benefits and Protections for Civilian Federal Employees and their Spouses

Current and former civilian employees of the federal government may be eligible for an array of protections and benefits for their spouses.



Family and Medical Leave Act for Non-Federal Employees

This guidance addresses the rights that non-federal employees and their same-sex spouses should expect to receive under the FLMA now that DOMA has been struck down.



Federal Taxes

Summarizes a few of the many tax issues *potentially* affecting married same-sex couples now that DOMA has been invalidated.



The Free Application for Federal Student Aid (FAFSA)

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



Immigration

These FAQs address some of the questions we anticipate LGBT families with immigration issues will have following a Supreme Court decision striking down DOMA.

www.lambdalegal.org/publications/after-doma



Medicaid

Medicaid is a health insurance program for very low-income people who meet certain guidelines.



Social Security & Family Protections

This guidance addresses Social Security spousal benefits: when one spouse retires; in the event of disability; and when one spouse has passed away.



Military Spousal Benefits

This guidance addresses the allowances and benefits provided to service members who are married (or who have another qualified dependent).



Veteran's Spousal Benefits

This guidance addresses the two categories of veterans who receive benefits from the Department of Veterans Affairs: qualified non-retired veterans and retirees.



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.



Medicare Spousal Protections

This guidance addresses the spousal protections of Medicare, the federal health insurance program for adults 65 and older, as well as for certain younger people with disabilities.



Bankruptcy

Now that DOMA has been struck down, this guidance provides basic information about bankruptcy filings, how being married matters in bankruptcy proceedings, and what married same-sex couples can expect.



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.

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.

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QUESTIONS



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