

## **DOMA / Same-Sex Spouse Benefits Briefing Card**

### **Background**

The Supreme Court found June 26, 2013, in U.S. v. Windsor that Section Three of DOMA is unconstitutional, paving the way for same-sex spouses to receive the full range of military/federal benefits, as long as service members provide a valid marriage certificate from one of the states (or the District of Columbia) a jurisdiction that recognizes same-sex marriage.

In light of the Court's ruling, the Department has reassessed the decision to extend some benefits to same-sex domestic partners. After a careful review, the Secretary, consistent with the unanimous advice of the Joint Chiefs of Staff, determined that the extension of benefits to the same-sex domestic partners of military members is no longer necessary to remedy the inequity that was caused by section 3 of the Defense of Marriage Act. As such, Secretary Hagel's memo stated that the Department of Defense will not proceed with the plan to provide 22 benefits to same-sex domestic partners delineated in then-Secretary of Defense Panetta's memo of Feb. 11, 2013.

### **Talking Points**

- The Department has begun the process of implementing the Supreme Court's decision in consultation with the Department of Justice and other executive branch agencies. It is now the law, and it is the right thing to do.
- The Department of Defense remains committed to ensuring that all men and women who serve our country, and their families, are treated fairly and equally. Expedient implementation of the decisions announced in Secretary Hagel's memorandum will help the Department remain true to its commitment.
- The Department will make the same benefits available to all military spouses, regardless of sexual orientation, as long as service member-sponsors provide a valid marriage certificate from a jurisdiction (including those overseas) that recognizes same-sex marriage.
- All spousal and family benefits, including ID Cards, will be made available no later than September 3, 2013.
- We recognize that same-sex couples 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.
- Entitlements such as basic allowance for housing (BAH) and family separation allowance are retroactive to the date of the Supreme Court's decision, June 26, 2013. Any claims to entitlements before that date will not be granted. For those members married after June 26, entitlements begin at the date of marriage.

- For civilian benefits administered Government-wide to Federal employees, the Department of Defense will follow OPM/DoL's guidance to ensure that the same benefits currently available to heterosexual spouses are also available to same-sex spouses.
- For civilian employees, the Department will continue to follow the President's June 2, 2010, memorandum, "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees," which requires agencies, where consistent with law and wherever possible, to extend benefits to same-sex domestic partners.
- For civilian employees who are eligible for ID card related benefits, the Department intends that ID cards will be made available to same-sex spouses and same-sex domestic partners of civilian employees at the same time as same-sex spouses of military members.
- Married retirees will be able to obtain ID cards for their same-sex spouses at the same time as the same-sex spouses of active and reserve component members (Sept. 3, 2013). They will also be able to elect coverage for their same-sex spouses under the Survivor Benefit Plan (SBP).
- TRICARE enrollment for medical benefits is tied to DEERS and will be available to same-sex spouses beginning Sept. 3, 2013.
- On February 11, 2013, then-Secretary Panetta directed that the Department of Defense would extend 22 benefits to same-sex domestic partners of military members and their children, but that if the Defense of Marriage Act were no longer applicable to the Department a reassessment would be conducted.
- As the Supreme Court's ruling has made it possible for the Department to recognize same-sex marriages, Secretary Hagel, consistent with the unanimous advice of the Joint Chiefs of Staff, determined that the Supreme Court's ruling closed the gap in equity for benefits for all married Service members and their families and has eliminated the need to proceed with the declaration for same-sex domestic partners. Spousal and family benefits far outweigh the benefits that could be extended under a declaration system for same-sex domestic partners.
- We recognize there remains a challenge for same-sex couples not stationed in, or near a jurisdiction that permits same-sex marriage. Accordingly, the Department will immediately implement policies to allow military personnel up to 10 days (7 days CONUS/10 days OCONUS) of 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.
- As operational requirements permit, commanding officers *may* allow military personnel in same-sex relationships up to 10 days of non-chargeable leave for the purpose of travelling to a jurisdiction that allows same-sex couples to be married if they are stationed more than 100 miles from one of those areas. Personnel stationed within the in continental United States *may* receive up to 7 days non-chargeable leave and those stationed at overseas assignments *may* receive up to 10 days non-chargeable leave.

- The Department is planning a careful review of command sponsorship for overseas tours, as well as all applicable Status of Forces agreements. The review of applicable Status of Forces agreements will be done in coordination with the Department of State.
- We will assess costs as we move forward with implementation.
- We do not have an estimate of how many people this will impact.
- As was the case before the Court's ruling, a military chaplain as well as individual service members, may participate in any private ceremony, whether on or off a military installation, provided that the ceremony is not prohibited by applicable state and local law. Further, a chaplain is not required to participate in or officiate a private ceremony if doing so would be in variance with the tenets of his or her religion or personal beliefs.
- For specifics regarding the Court's decision and how it will be applied to federal and state law, we refer you to the Department of Justice.
- There are 20 member-designated benefits currently available to all service members regardless of sexual orientation. Service members may designate any beneficiary of their choosing for these benefits.

### **Questions & Answers**

#### **Q: What changed for DOD with the Court's decision?**

The Supreme Court's ruling means that the Defense Department will extend benefits, including medical, dental, burial at Arlington National Cemetery, and with-dependent Basic Allowance for Housing to same-sex spouses of military personnel.

Also, there are 20 member-designated benefits that are already available to a person of the service member's choosing (i.e. insurance, death gratuity, Montgomery GI Bill). You can find the list at: [http://www.defense.gov/home/features/2010/0610\\_dadt/Benefits\\_Currently\\_Available\\_Approved.pdf](http://www.defense.gov/home/features/2010/0610_dadt/Benefits_Currently_Available_Approved.pdf)

#### **Q. When will same-sex spouses be able to receive benefits? Will they be retroactive to the date of the Supreme Court decision?**

The Department will recognize all marriages that are certified with a valid marriage license. Spousal and family benefits, including ID cards, will be made available to same-sex spouses as of Sept. 3, 2013.

Entitlements such as basic allowance for housing (BAH) and family separation allowance are retroactive to the date of the Supreme Court's decision, June 26, 2013. Any claims to entitlements before that date will not be granted. For those members married after June 26, entitlements begin at the date of marriage.

#### **Q. Will benefits be denied if an instruction or manual change has not been completed?**

No. However, we will update any Department of Defense Instruction that needs to be updated.

#### **Q. Why are you no longer giving benefits to same-sex partners announced in February by Secretary Panetta?**

As the Supreme Court's ruling has made it possible for the Department to recognize same-sex marriages, Secretary Hagel, consistent with the unanimous advice of the Joint Chiefs of Staff, determined that the Supreme Court's ruling closed the gap in equity for benefits for all married Service members and their families and has eliminated the need to proceed with the declaration for same-sex domestic partners.

**Q. Aren't you going back on your word?**

As the Supreme Court's ruling has made it possible for the Department to recognize same-sex marriages, Secretary Hagel, consistent with the unanimous advice of the Joint Chiefs of Staff, determined that the Supreme Court's ruling closed the gap in equity for benefits for all married Service members and their families and has eliminated the need to proceed with the declaration for same-sex domestic partners.

**Q. Why are you giving free leave to gay and lesbians to get married?**

The Department of Defense is committed to following the law and to treating all marriages equally. We have always said that after DOMA repeal we would need to look at our benefit policies for fairness. Although we have bases and installations in all 50 states and around the globe, not all local laws are equal when it comes to same-sex marriage. That is why we are providing administrative leave for same-sex couples who want to get married so that they can travel to a state or jurisdiction that allows same-sex couples to marry.

**Q. Will this leave also be retroactive?**

No.

**Q: Will the Department provide assistance for travel?**

The law does not allow the government to fund travel that is not for official government business.

**Q. How many service members does this affect?**

We do not have an estimate of how many people this will impact. The Department does not track the sexual orientation of our members.

\*\*\* On BACKGROUND: Defense Officials stated in the February backgrounder that same-sex partners numbered approximately 5,600 active component members; 3,400 reserve component members; 8,000 military retirees.

**Q. Does this mean sexual orientation will now be tracked as a demographic as the Department does race, gender and ethnicity?**

As is now the case, sexual orientation is considered a personal and private matter and as such is not tracked by the Department.

**Q. When is the effective day of the decision? When will same-sex spouses be eligible for family benefits? Will back-payments of Basic Allowance for Housing and other payments for family members be made?**

Entitlements such as basic allowance for housing (BAH) and family separation allowance are retroactive to the date of the Supreme Court's decision, June 26, 2013. Any claims to entitlements before that date will not be granted. For those members married after June 26, entitlements begin at the date of marriage.

**Q. Will I be able to be reimbursed my spouses medical expenses?**

Yes. Entitlements for medical expenses are retroactive to the date of the Supreme Court's decision, June 26, 2013. Any claims to entitlements before that date will not be granted. For those members married after June 26, entitlements begin at the date of marriage.

**Q: How much will implementing these benefits cost DOD?**

A: We will assess costs as we move forward with implementation.

**Q: How will the Court's decision impact Government Civilians?**

For civilian employees, the Department will follow OPM's guidance.

**Q: What is the policy related to the Arlington Cemetery burial?**

The policies governing burial at Arlington National Cemetery will apply equally to same-sex and opposite-sex spouses.

**Q: What about overseas tours – will a same-sex spouse be able to accompany the service member on an overseas tour?**

The Department is planning a careful review of command sponsorship for overseas tours, as well as all applicable Status of Forces agreements. The review of applicable Status of Forces agreements will be done in coordination with the Department of State.

**Q: How will this affect Chaplains?**

A: As was the case before the court's ruling, a military chaplain may participate in or officiate any private ceremony, whether on or off a military installation, provided that the ceremony is not prohibited by applicable state and local law. Further, a chaplain is not required to participate in or officiate a private ceremony if doing so would be in variance with the tenets of his or her religion or personal beliefs.

**BACKGROUND ONLY:**

Service Chaplain Corps instructions/regulations state that chaplains who decline to perform will indirectly provide, provide or facilitate by referring to someone who can assist.

**References:**

AFI 51-101, 2.1. As visible reminders of the Holy, chaplains directly or indirectly provide for the free exercise of religion for Airmen, their families, and other authorized personnel. Chaplains do not perform duties incompatible with their faith group tenets, professional role, or noncombatant status."

AR 165-1, 2-3. Religious support operations, b. (1) Professional military religious leader. Perform or provide religious support that meets the spiritual and religious requirements of the unique military culture.

OPNAV 1730.1D, Religious Ministry in the Navy, 4. Definitions a. Religious Ministry. Religious Ministry is the entire spectrum of professional duties performed by Navy chaplains and Religious Program Specialists to provide for or facilitate the free exercise of religion and accommodates the religious practices of military personnel, their families, and other authorized personnel.

**Q: How will this affect retirees?**

Married retirees will be able to obtain ID cards for their same-sex spouses at the same time as active and reserve members can for their same-sex spouses. (Sept. 3, 2013). They will also be able to elect coverage for their same-sex spouses under the Survivor Benefit Plan (SBP).