

THE AMERICAN MILITARY PARTNER ASSOCIATION



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Connecting, supporting, honoring, and serving the partners and spouses of America's LGBT servicemembers and veterans - our nation's "silent heroes."

BENEFITS GUIDE TO LGB MILITARY FAMILIES

AMERICAN MILITARY PARTNER ASSOCIATION

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About

The American Military Partner Association (www.MilitaryPartners.org) is the nation's premier support and resource network for the partners/spouses of LGBT servicemembers and veterans. Founded and led by the same-sex partners and spouses of servicemembers, AMPA was launched originally in 2009 as the "Campaign for Military Partners" sponsored by Servicemembers United. This first-of-its-kind initiative grew substantially over the course of the ensuing two years and graduated to become the American Military Partner Association on September 20, 2011 – the day that the "Don't Ask, Don't Tell" law was officially repealed.

Benefits Guide

The American Military Partner Association prepared this Benefits Guide to assist lesbian, gay, and bisexual (LGB) servicemembers and their families. This Guide provides an overview of the benefits available to current servicemembers and their families. It does *not* discuss veteran's benefits. However, this Benefits Guide does not replace any legal or financial advice. You should consult with your military personnel office, attorney, or financial planner if you have specific questions.

Accompanying this Guide, the American Military Partner Association prepared a Summary of Benefits to show lawmakers the inequalities LGB servicemembers and their families still face.

Acknowledgments

Matthew Alex Ward prepared this Benefits Guide on behalf of the American Military Partner Association. Information primarily comes from the *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"*¹ and Servicemembers Legal Defense Network (SLDN) *Guide to LGBT Military Service*.² The SLDN guide provides additional information for LGB servicemembers; this Guide focuses on benefits. Additionally, this Guide uses the abbreviation LGB; the T is excluded because the *Don't Ask, Don't Tell* repeal did not impact the status of transgendered individuals which military regulations bar from serving.³

¹ U.S. DEPT OF DEF., REPORT OF THE COMPREHENSIVE REVIEW OF THE ISSUES ASSOCIATED WITH A REPEAL OF "DON'T ASK, DON'T TELL" (Nov. 30, 2010) (hereinafter WORKING GROUP) available at http://www.defense.gov/home/features/2010/0610_dadt/DADTRReport_FINAL_20101130%28secure-hires%29.pdf.

² *Guide to LGBT Military Service*, SERVICEMEMBERS LEGAL DEFENSE NETWORK, <http://www.sldn.org/pages/guide-to-open-service>.

³ While discussions of homosexual rights often use the abbreviation LGBT the T is purposefully absent here. This is because military medical regulations, not DADT, bar transgendered individuals from serving. See U.S. DEP'T OF ARMY, REG. 40-501, Standards of Medical Fitness ¶ 3-35 (4 Aug. 2011) (rendering the individual administratively unfit for military service).

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Benefits Overview

Although it is hard to believe in today's military, for the longest time the military only reluctantly approved of its servicemembers marrying.⁴ Following the 1973 elimination of the draft,⁵ the military realized that maintaining an active duty force required providing for and accommodating the families of servicemembers,⁶ resulting in the quip that the military enlists servicemembers but reenlists families.⁷ As a result, the military now provides a variety of benefits to servicemembers and their families. To illustrate, the Working Group examining Don't Ask, Don't Tell acknowledged that "benefits cover many aspects of day-to-day life."⁸

Military benefits available to spouses are divided into three categories:

- 1) Benefits designated by servicemembers or "member-designated" benefits;
- 2) Benefits triggered by marriage; and
- 3) Benefits designated by military regulations.

Benefits Designated by Servicemembers

The first category of military benefits is benefits designated by servicemembers or "member-designated" benefits. Here, servicemembers have discretion to name the beneficiary. Servicemembers may designate any individual, including their same-sex partner, for the following benefits:

- Beneficiary of Servicemembers Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) payments. Information about SGLI is available at <http://www.insurance.va.gov/sglisite/vgli/vgli.htm> and information about VGLI is available at <http://www.insurance.va.gov/sglisite/vgli/vgli.htm>;
- Receipt of unused contributions from Post Vietnam-Era Veterans Assistance Program (VEAP) and the Montgomery G.I. Bill Death Benefit, as long as the beneficiary is also

⁴ BETTY L. ALT, FOLLOWING THE FLAG: MARRIAGE AND THE MODERN MILITARY 9-10, 20 (2006) ("The old adage 'if the military wanted you to have a wife, they'd have issued you one,' was not a joke. Wives and families were not welcomed; they were only tolerated.").

⁵ Act of September 28, 1971, Pub. L. No. 92-129, 85 Stat. 348 (codified at 50 U.S.C. App. § 467(c)).

⁶ ALT, *supra* note 4, at 20, 22 ("Without changes to support families, the all volunteer force might never have succeeded, so the military was forced to make improvements in family lifestyles.").

⁷ *Id.* at 19; ELAINE GRAY DUMLER, ALREADY HOME I (2003) ("The military doesn't enlist only soldiers; they enlist families."); Marcy Karin, *Time Off for Military Families: An Emerging Case Study in a Time of War ... And the Tipping Point for Future Laws Supporting Work-Life Balance?*, 33 RUTGERS L. REV. 46, 47 (2009) (OIF "solidified the military's embrace of the concept of recruiting a soldier and retaining a family...").

⁸ WORKING GROUP, *supra* note 1, at 146.

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designated as an SGLI beneficiary. Information about the VEAP is available at http://www.gibill.va.gov/benefits/other_programs/veap.html and information about the Montgomery G.I. Bill Death Benefit is available at http://www.gibill.va.gov/documents/pamphlets/ch30_pamphlet.pdf;

- Beneficiary of Thrift-Savings Plan (TSP). The TSP is a retirement savings and investment plan for Federal employees and servicemembers. More information is available at <https://www.tsp.gov/index.shtml>;
- Retirement annuity under the Survivor Benefit Plan (SBP), as long as the servicemember is not in an opposite-sex marriage and does not have a dependent child. Information about the SBP is available at <http://militarypay.defense.gov/survivor/sbp/index.html> and <http://www.dfas.mil/retiredmilitary/provide/sbp.html>;
- Beneficiary for Death Gratuity and Beneficiary for Unpaid Pay/Allowances on DD Form 93. The DD Form 93 is described below;
- Appointment as the Designated Caregiver of a wounded service member during recovery, under the Wounded Warrior Act;
- Appointment as the caregiver of the service member's Family Care Plan (FCP) if the service member is deployed. The caregiver "agrees . . . to care for one or more family members during a [service]member's absence for indefinite periods to ensure the [service]member is available for worldwide duties."⁹ The Army FCP, DA Form 5305, is available at <http://armypubs.army.mil/eforms/pdf/A5305.pdf>; The Air Force FCP, AF Form 357, is available at <http://www.e-publishing.af.mil/>; the Navy FCP Certificate, NAVPERS 1740-6, is available at http://www.public.navy.mil/bupers-npc/reference/forms/NAVPERS/Documents/NAVPERS%201740-6%20R02-11_RE.pdf; The Marine Corps FCP, NAVMC 11800, is available at <http://www.mccs-sc.com/mcftb/docs/NAVMC11800.pdf> or <http://www.mccscp.com/sites/default/files/pdf/marine-family-programs/mcftb/Readiness%20&%20Deployment%20Support/2012FamilyCarePlanFORM.pdf>. As each military branch has specific regulations, you should consult with your personnel office to complete the FCP;
- Hospital Visitation; servicemembers may consent to receive anyone as a visitor.

DD Form 93

The DD Form 93 is a record of emergency data. The form is available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0093.pdf>. (Note all branches use this form.) Servicemembers use this form to designate who the military should contact in an emergency. Servicemembers also use this form to designate the beneficiary(s) for death gratuity and the beneficiary(s) for unpaid pay and/or allowances. In addition, servicemembers may now designate any person listed in block 13A to serve as the Person Authorized to Direct Disposition (PADD) of servicemembers' remains should servicemembers be killed in action. Previously only

⁹ DEPT. OF DEF. INST. NO. 1342.19, FAMILY CARE PLANS 14 (May 7, 2010) available at <http://www.dtic.mil/whs/directives/corres/pdf/134219p.pdf>.

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an opposite-sex spouse, blood relative, or adoptive relative could serve as the PADD.¹⁰
Servicemembers should ensure they update this form and provide their personnel office with the latest update.

Other Benefits & Activities

While not benefits per se, servicemembers may involve their spouses or partners through numerous other activities. For example, servicemembers may bring their guest to dining outs or military balls. Servicemembers may also encourage their spouses or partners to participate in Family Readiness Groups. Likewise, servicemembers may also encourage their spouses or partners to attend deployment, welcome home, change of command, or other ceremonies. Additionally, reserve servicemembers may invite anyone to attend as their guests to Yellow Ribbon Reintegration workshops.¹¹

Benefits Triggered by Marriage

The second category of military benefits is benefits triggered by marriage. Specifically, these benefits are automatically triggered upon marriage.

Both the federal and state governments regulate marriage. Both federal and state marriage laws affect servicemembers. Federal and state laws vary their recognition of same-sex marriage. Federal law determines whether married servicemembers are eligible for benefits triggered by marriage. **The federal Defense of Marriage Act prohibits the military from recognizing same-sex marriages.** The military does not recognize same-sex marriage even if state laws recognize same-sex marriages.

Regulation of Marriage

Both the federal and state governments regulate marriage. The federal Defense of Marriage Act (DOMA) prohibits the federal government from recognizing same-sex marriages.¹² DOMA defines “the word ‘marriage’ [as] only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ [as] only to a person of the opposite sex who is a husband or a wife.”¹³ Additionally, DOMA provides that there is no requirement for a state to recognize a same-sex marriage performed elsewhere.¹⁴ As of 2004, DOMA prevented same-sex

¹⁰ See All Army Activities (ALARACT) 118/2012 (citing the Nat’l Defense Authorization Act for FY 12).

¹¹ Assoc. Press, *Gay Partner Allowed to Attend N.H. Guard Event*, ARMY TIMES, Oct. 19, 2011, <http://www.armytimes.com/news/2011/10/ap-gay-partner-allowed-to-attend-new-hampshire-guard-event-101911/>.

¹² Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996).

¹³ 1 U.S.C. § 7 (2006). Other federal statutory definitions relevant to the military additionally define marriage as having an opposite sex spouse. *E.g.*, 38 U.S.C. § 101(3) (2006) (defining surviving as a “person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death...”); 38 C.F.R. § 3.50(a) (2011) (“‘Spouse’ means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).”).

¹⁴ 28 U.S.C. § 1738C (2006).

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spouses from receiving 1,138 federal benefits contingent on marital status.¹⁵ DOMA remains the law, although several lawsuits have challenged its constitutionality.¹⁶

In turn, states typically determine eligibility requirements for marriage and divorce. This affects all military families. Servicemembers and their spouses might be subject to the eligibility requirements of the states where they are residents of or the states where they are stationed. At the time of this guide's publication, ten states permit same-sex marriage (Connecticut, Washington D.C., Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and Washington).¹⁷ Seven states (California, Delaware, Hawai'i, Illinois, Nevada, New Jersey, and Oregon) allow a civil union or domestic partnership which is equivalent to marriage.¹⁸ Two states (New Mexico and Rhode Island) have no formal laws either recognizing or prohibiting same-sex marriage, although Rhode Island recognizes same-sex marriages performed elsewhere.¹⁹ The remaining states do not recognize same-sex marriage.

Benefits Triggered by Marriage

Benefits triggered by marriage include the following:

- Medical and dental care;*
- Emergency designation via the DD Form 93. The DD Form 93 was previously discussed. However, servicemembers may designate any individuals, in addition to the primary next of kin and secondary next of kin, to receive notification of a casualty;
- Basic Allowance for Housing (BAH) at the "With Dependents" Rate.** BAH is a tax-free subsidy to servicemembers to offset the cost of housing when servicemembers do not receive government provided housing.²⁰ BAH allowances are based on rank, duty locations, and marital or dependency status;²¹
- Family Separation Allowance;**
- Military ID Cards;*
- Morale, Welfare, and Recreation Programs;*
- Relocation and Transportation;
- Employment and education for spouses; including the Military Spouse Career Advancement Accounts which provide up to \$2,000 a year to military spouses;²²
- Family advocacy and spousal abuse services.

¹⁵ U.S. GOV. ACCT. OFFICE, GAO-04-353R DEFENSE OF MARRIAGE ACT (2004), available at <http://www.gao.gov/new.items/d04353r.pdf>.

¹⁶ *E.g.*, Gill et al. v. Office of Pers. Mgmt., 699 F.Supp.2d 374, 376-77 (D. Mass. 2010).

¹⁷ *State By State: The Legal Battle Over Gay Marriage*, NPR, <http://www.npr.org/templates/story/story.php?storyId=112448663>; *Same Sex Marriage*, NAT'L CONF. OF STATE LEGIS., <http://www.ncsl.org/default.aspx?tabid=16430>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Basic Allowance for Housing*, U.S. DEPT. OF DEF., <http://militarypay.defense.gov/pay/bah/>.

²¹ U.S. DEPT. OF DEFENSE, A PRIMER ON BASIC ALLOWANCE FOR HOUSING (BAH) FOR THE UNIFORMED SERVICES 3 (2011) available at <http://www.defensetravel.dod.mil/Docs/perdiem/BAH-Primer.pdf>.

²² *Spouse Education and Career Opportunities*, MIL. ONE SOURCE, <http://www.militaryonesource.mil/> (click on "Career & Education" link).

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Marriage, specifically providing a copy of the marriage certificate to the personnel office and enrolling one's spouse in the Defense Enrollment Eligibility Reporting System (DEERS), triggers these benefits.²³ As described above, DOMA prohibits the federal government, and therefore the military, from recognizing same-sex marriages. **Thus, same-sex partners are not eligible for these benefits.**

Dependent Child(ren)

Some of the benefits triggered by marriage are also available to servicemembers with dependent child(ren) and adults incapable of caring for themselves. These benefits includes enrolling the child(ren or adults) in DEERS, obtaining dependent military identification, receiving medical and dental care, and participating in MWR programs. (These benefits are marked by the asterisk (*) above.)

Two of the benefits triggered by marriage are also triggered if servicemembers have dependents: either a spouse, or custody of a child, or custody of an adult incapable of caring for one's self: the BAH "with dependents" rate and the family separate allowance. (These benefits are marked by the double asterisk (**)) above.) Thus, childless LGB servicemembers married to their same-sex partners will receive the BAH "*without* dependent" rate and will not receive the family separation allowance. In contrast, LGB servicemembers married to their same-sex partners with child(ren) or adults incapable of caring for themselves will receive the BAH "with dependents" rate and receive the family separation allowance because the child(ren), *not* the same-sex spouse, qualifies as the dependent(s). As a result, once the child(ren) reach the age of majority (which varies depending on the benefit²⁴), they will no longer qualify as dependent(s) and therefore LGB servicemembers and their same-sex partners will no longer receive the BAH "with dependents" rate or family separation allowance.

Benefits Designated by Military Regulations

The third category of military benefits is benefits designated by military regulations. For these benefits, Congress has not limited the benefits to preclude same-sex partners, but the current Department of Defense regulations do not extend them to same-sex partners.²⁵ These benefits include:²⁶

- Free legal services by military legal assistance officers;
- Military family housing;
- Programs provided by family services;
- Shopping at commissaries and exchanges;
- Joint duty assignments;

²³ U.S. AIR FORCE, U.S. AIR FORCE INSTRUCTION 36-3026 IP, VOL. 1, IDENTIFICATION CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR ELIGIBLE FAMILY MEMBERS, AND OTHER ELIGIBLE PERSONNEL ¶ 2.4.1 (2009).

²⁴ For example, there is an extension for dependent children attending college.

²⁵ WORKING GROUP, *supra* note 1, at 144.

²⁶ *Id.* at 144-45.

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- Spousal privileges in court martial;²⁷
- Relocation and command sponsored status.

The Working Group recommended the Department of Defense review this category to determine what benefits could become member-designated benefits.²⁸ Nevertheless, the Working Group also recommended against redefining “dependent” to include committed same-sex partners of LGB servicemembers, because this would be difficult to administer and doing so would create inequality between unmarried, committed same-sex couples and unmarried, committed opposite-sex couples.²⁹

The Working Group recognized how DOMA will affect same-sex spouses of LGB servicemembers. Some overseas duty locations allow servicemembers to bring their dependents.³⁰ However, some agreements between host nations and the United States were written to exclude same-sex partners from receiving the protections for civilians who accompany servicemembers.³¹ Similarly, the military does not recognize same-sex marriages³² regarding the military policies for assigning dual-career military married couples to the same area.³³ As a result, marital status remains the *de facto* determinant of whether servicemembers and their families are eligible for these benefits.

Additional Information

States’ Recognition

As previously noted, states vary their recognition of same-sex marriages. This could affect the ability of servicemembers to get married or divorced depending on their state of domicile or the state where they are based. Currently, the military permits chaplains to authorize a same-sex ceremony on post if the base is in a state that recognizes same-sex marriages.³⁴

²⁷U. S. DEPT. OF DEF., MANUAL FOR COURTS-MARTIAL, UNIFORMED CODE OF MILITARY JUSTICE (2008 ed.); MIL. R. EVID. 504(a).

²⁸WORKING GROUP, *supra* note 1, at 145.

²⁹*Id.* at 145-46.

³⁰*Id.* at 147; Ed O’Keefe, *Celebration and Concern Mark the End of ‘Don’t Ask, Don’t Tell’*, WASH. POST, Sept. 19, 2011, http://www.washingtonpost.com/politics/celebration-and-concern-mark-the-end-of-dont-ask-dont-tell/2011/09/16/gIQAC0hffK_story.html.

³¹WORKING GROUP, *supra* note 1, at 147.

³²*Id.*

³³U.S. ARMY, ARMY REG. 614-100, OFFICER ASSIGNMENT POLICIES, DETAILS, AND TRANSFERS ¶ 1-6(d)(2) (2006) (noting the servicemembers’ marital status is not a factor to consider except to “keep married Army couples together according to current policies.”), ¶5-3 (describing policies for assignment of dual-military couples); U.S. ARMY, ARMY REG. 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT ¶ 5-20 to ¶ 5-25 (2011) (describing the Married Army Couples Program).

³⁴Memorandum from Undersecretary of Defense Clifford L. Stanley for Secretaries of the Military Departments (Sept. 30, 2011) available at <http://cmrlink.org/CMRDocuments/Johnson-Stanley0911.pdf>; Ed O’Keefe, *Gay Weddings May Be Performed by Military Chaplains, Pentagon Says*, WASH. POST, Sept. 30, 2011, http://www.washingtonpost.com/politics/gay-weddings-may-be-performed-by-military-chaplains-pentagon-says/2011/09/30/gIQAgkJ8AL_story.html; Andrew Tilghman, *Chaplains Can Preside Over Same-Sex Weddings*,

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DOMA Lingering Affect on Sexual Orientation

The DADT repeal was suppose to make sexual orientation a nonissue in the military. For example, the Army issued a statement accompanying the DADT Repeal announcing that Army regulations and policies will be applied “uniformly without regard to sexual orientation, which is a personal and private matter.”³⁵ Indeed, military regulations don’t distinguish sexual orientation and instead focus on whether servicemembers have dependants. Rather, the federal DOMA prevents the military from recognizing LGB military families, by defining marriages between the opposite-sex.³⁶ As such, while the military supports the military family, sexual orientation is *not* a nonissue when it comes to the military’s treatment of military families. Thus, because the military cannot recognize same-sex marriages, LGB military families do not receive the same financial and social support as other military families despite the military’s claims to apply its policies “without regard to sexual orientation.”³⁷ This tension between DADT’s repeal and DOMA has already led to several lawsuits.³⁸ However, this tension will remain until the Defense of Marriage Act is repealed or the Supreme Court of the United States declares DOMA unconstitutional.

Take a Stand to Make a Difference

You can help in the fight to repeal DOMA by sharing your story with the American Military Partner Association. Sharing your story will show how DOMA harms LGB servicemembers and LGB military families; families who experience the same struggles and hardships as all military families and should therefore be entitled to the same support and benefits available to all servicemembers and all military families.

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ARMY TIMES, Sept. 30, 2011, <http://www.armytimes.com/news/2011/09/military-chaplains-same-sex-weddings-093011w/>.

³⁵ RAYMOND F. CHANDLER III, RAYMOND T. ORDIERNO, & JOHN M. MCHUGH, DON’T ASK DON’T TELL REPEAL (Sept. 20, 2011) available at <http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2011/09/19/National-Politics/Graphics/DA-Tri-signed-dadt-repeal-cert.pdf>.

³⁶ 1 U.S.C. § 7 (2006).

³⁷ CHANDLER ET AL., *supra* note 35.

³⁸ McLaughlin et al v. Panetta, No. 1:11-cv-11905 (D. Mass. filed Oct. 27, 2011) complaint available at http://sldn.3cdn.net/2d3f59bfb3218eae20_c5m6b5twn.pdf; Jessica Gresko, *Gay Veteran Sues Over Denial of Spouse Benefits*, ARMY TIMES, Feb. 1, 2012.