

# Federal Benefits for Same-Sex Married Couples Not Always Clear Cut

By [Donald Scarinci](#)

While the Federal Government certainly understands the U.S. Supreme Court's decision that overturned the federal Defense of Marriage Act, many same-sexed married couples are still unable to receive federal benefits.

In just the past month, the Department of Labor announced that [same-sex married spouses](#) are now entitled to leave benefits under the Family and Medical Leave Act (FMLA). Also, the Internal Revenue Service announced that legally married same-sex couples will file taxes like any other spouses by selecting married filing jointly or married filing separately.

Changes in federal policy have also exceeded the bounds of the Court's decision in *U.S. v. Windsor*. For instance, the [Department of Justice](#) will no longer enforce statutory language that restricts veteran's benefits to spouses of opposite-sex marriages.

In a letter to Congressional leaders, Holder stated that the Obama Administration's decision is consistent with the Supreme Court's ruling. "Continued enforcement would likely have a tangible adverse effect on the families of veterans and, in some circumstances, active-duty service members and reservists, with respect to survival, health care, home loan and other benefits," Holder wrote.

Despite these recent changes, the legal headaches for many same-sex couples are far from over. The Supreme Court's decision in *Windsor* did not address what happens when couples are legally married in a state that recognizes same-sex marriage but reside in a state that does not.

While some federal policies and laws specify that same-sex couples are eligible for benefits so long as the marriage was valid in the state where it was celebrated, others depend on whether the couple's state of residence recognizes the legality of the marriage.

For example, the IRS has adopted the position that legally married same-sex spouses will be treated as married for federal tax purposes regardless of whether a couples' state of residence accepts or bans their marriage. "Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be covered by the ruling," the agency's announcement clarified.

The Department of Health and Human Services also adopted the so-called "place-of-celebrations" rule for awarding Medicare benefits to same-sex married couples. Other agencies, however, rely on the legality of same-sex marriage in the couple's home state. The Social Security Administration and the Department of Labor are among them.

To address the burdens imposed by the inconsistent rules, efforts are underway to create legislation that would create a uniform place-of-celebration rule, which would apply to all

federal laws. The other option is to create a new legal standard for determining benefits eligibility for same-sex couples that would also recognize civil unions.

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