

The Obama Administration's New Position on Same-Sex Marriages

Author: [John D. Martini](#), Partner, Philadelphia

Author: [Lori M. Atkin](#), Counsel, Philadelphia

Author: [Kenneth R. Levine](#), Associate, Philadelphia

Author: [Dennis R. Bonessa](#), Partner, Pittsburgh

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Under current federal law, individuals recognized as same-sex spouses under state law are not considered married for purposes of federal law. This has ramifications in a number of areas, such as federal income taxation and rights to certain benefits under qualified pension plans.

On February 23, 2011, Attorney General Eric Holder issued a letter to Congress announcing that the Obama administration will no longer defend the constitutionality of section 3 of the Defense of Marriage Act ("DOMA"), which defines the terms "spouse" and "marriage" for purposes of all federal laws and administrative actions.

Under section 3 of DOMA:

- A "spouse" is defined as a person of the opposite sex who is a husband or wife; and
- "Marriage" is defined as a legal union between one man and one woman as husband and wife

The Obama administration's view, as expressed in Attorney General Holder's letter, is that definitions based on sexual orientation merit a heightened level of judicial scrutiny, and under such scrutiny, section 3 of DOMA is unconstitutional as applied to same-sex couples legally married under state law. Therefore, the Department of Justice will not defend section 3 of DOMA in two current lawsuits challenging its constitutionality.

What Does This Mean?

According to Attorney General Holder's letter, until Congress repeals section 3 of DOMA or the courts definitively rule it unconstitutional, section 3 of DOMA will continue to be enforced by the



executive branch, and same-sex spouses will not be treated as married for purposes of federal law and administrative actions.

This issue could take several years to wend its way through the courts before a "definitive" decision is reached. In the interim, the results of the next federal election could result in a policy shift on DOMA.

So for now, no changes to tax and benefit plan administration should be made. We will keep you updated about any future developments.

With the uncertainty that now exists with respect to same-sex marriages at the federal level, employers may need to exercise heightened awareness to the laws of the states where they have employees. Currently, Connecticut, the District of Columbia, Iowa, Massachusetts, New Hampshire, and Vermont issue marriage licenses to same-sex couples. In addition, a number of other states that do not currently issue marriage licenses to same-sex couples will recognize same-sex marriages from other states. California briefly issued marriage licenses to same-sex couples, but further licenses are on hold pending the outcome of judicial appeals.

It is important to note that, in addition to defining "spouse" and "marriage," DOMA provides that no state is required to recognize a same-sex marriage effected under the laws of another state. This provision of DOMA is not implicated by Attorney General Holder's February 23 announcement.

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