

Changes to Same-Sex Domestic Partner (SSDP) Program

(From State Department Cable issued October 14, 2015)

Summary

The Supreme Court's decision in *U.S. v. Windsor*, ruling that Section 3 of the Defense of Marriage Act is unconstitutional was a watershed moment, particularly for our LGBT colleagues. For the first time, the Department of State, among other departments and agencies, was able to extend all legally available benefits to married Federal employees or annuitants and their spouses who are in same-sex marriages on the same terms as are extended to employees, annuitants, or their spouses in opposite-sex marriages. More recently, *Obergefell v. Hodges* legalized same-sex marriage throughout the United States. In the wake of the *Windsor* decision, the Department, in consultation with the Department of Justice and others in the interagency process, acted quickly to extend all legally available benefits to same-sex spouses including health, life, and long-term care insurance. Following *Obergefell*, same-sex couples can now marry throughout the United States. The SSDP program, which extended benefits available under the Foreign Service Act (FSA) to recognized same-sex domestic partners accompanying an employee to an overseas post, was established in 2009 (REF A) primarily because the marriage of a same-sex couple did not qualify these individuals and their family members for federal benefits. Following the decisions in *Windsor* and *Obergefell*, this is no longer the case. By marrying, LGBT employees and their partners can receive a wide array of federal benefits including health and life insurance previously unavailable, as well as the benefits afforded pursuant to the FSA. Therefore, the Department will be implementing a phased end to the SSDP program as set forth below, taking into account that employees posted, transiting, or transferring abroad are not similarly situated to employees posted domestically. In addition, the J-1 visa program will be phased out in coordination with the SSDP program. End Summary.

SSDP Background Information

We worked closely with the Department of Justice, the American Foreign Service Association, and others in the interagency process as we considered what steps to take in the wake of the *Windsor* and *Obergefell* decisions, and we listened closely to employees. This cable advises employees and posts that (1) there will be no new enrollments in the SSDP program after December 14, 2015, with a limited exception for new hires; (2) the Department will phase out the SSDP program no later than September 30, 2018 and (3) administrative leave will be authorized for certain employees stationed overseas to travel for the purpose of getting married.

When it was created in 2009, the primary rationale for the SSDP program was that even if legally married, employees with same-sex spouses were ineligible under the Defense of Marriage Act (DOMA) to receive federal benefits for their spouses. Further, because of limited access to marriage at that time, many same-sex couples could not marry. Through the SSDP program, the State Department used the authority of the Foreign Service Act to deem SSDPs, declared by affidavit, "eligible family members," thereby providing many benefits and allowances for declared same-sex domestic partners of eligible employees overseas including, but not limited to, diplomatic passports, inclusion on employee travel orders, use of post medical facilities, and family member employment preference.

Further, the Department committed to working with foreign governments to provide same-sex domestic partners, to the extent possible, with diplomatic visas, privileges and immunities, and authorization to work in the local economy.

The June 26, 2013 Windsor decision held Section 3 of DOMA unconstitutional, thus enabling same-sex spouses to receive federal benefits available to opposite-sex spouses. With the June 26, 2015 Obergefell decision, same-sex marriage is now legal throughout the United States. In light of these developments, same-sex couples can obtain benefits previously only offered to opposite-sex couples. Same-sex couples are now able to meet the requirement that they be legally married in order for their partners to be eligible for federal benefits, including those previously provided to SSDPs under the Foreign Service Act.

Implementation of the SSDP Program Phase Out

The Department is providing a grace period of 60 days between this announcement and the effective date of this policy. The program will begin phasing out December 14, 2015 and terminate officially on September 30, 2018. To minimize any negative effect that an abrupt end to the program might have on employees currently receiving benefits through participation in the SSDP program, the following phase-out plan has been approved:

- a. Changes to the SSDP program in light of the Windsor and Obergefell decisions: Effective 60 days after the date of this ALDAC announcing the new policy, employees will no longer be allowed to enroll in the SSDP program. With federal benefits now available to legally married same-sex couples, marriage will henceforth be a prerequisite for any employee to receive federal benefits previously available under the SSDP program.
- b. New employees: If a new hire has an expected enter on duty (EOD) date within 120 days of the policy's effective date, the employee may enroll in the current SSDP program and will receive SSDP benefits through the end of his/her first overseas tour, including end-of-tour home leave, or until September 30, 2018, whichever date is sooner.
- c. Employees Currently at Post: If an enrolled SSDP is already at post, the current SSDP program will remain available through the end of the tour, including end-of-tour home leave, or until September 30, 2018, whichever date is sooner.
- d. Employees in transit between overseas posts, or transferring overseas from a domestic assignment, with existing transfer orders: If an employee enrolled in the current SSDP program is transitioning between overseas posts or transferring overseas from a domestic assignment, and will arrive at the assigned post 120 days or less from the effective date of the policy (i.e., 60 days after the release of this ALDAC), the current SSDP program will remain available through the end of the tour, including end-of-tour home leave, or until September 30, 2018, whichever date is sooner.
- e. Hardship Exception: In rare instances when an employee faces unusual circumstances not covered by the phase-out criteria described above, s/he may make a written request to the Director General of the Foreign Service for an extension of SSDP benefits. Such extensions may be granted for a limited period of time, consistent with the needs of the service.

SSDP J-1 Visa Program Phase Out

The J-1 Program No. G-1-13459 will be phased out in coordination with the SSDP program. With the Windsor and Obergefell decisions, the special Exchange Visitor Program (J-1) created to allow non-U.S.-citizen SSDPs to accompany Foreign Service employees to the United States is no longer necessary. Non-U.S.-citizen spouses can receive visas based on their marriage to their U.S.-citizen spouse. Non-U.S.-citizen fiancés can receive K-visas to enter the United States for 90 days and apply for a more permanent status upon marriage, subject to the normal visa fees paid by family members of other U.S. citizens. Because same-sex couples now can apply for visas on the same terms as opposite-sex couples, the SSDP J-1 visa program will be phased out. After 60 days from this announcement, no new J-1 visas will be issued. Remaining participants in the program will be allowed to keep their J-1 visas until the end of their Washington tour or until September 30, 2018, whichever date is sooner.

Administrative "Marriage Leave"

A limited "marriage leave" policy similar but not identical to the policy adopted by the Department of Defense for the U.S. military will be available for Department of State employees serving overseas under certain circumstances. Although Foreign Service employees can now marry in the United States, the worldwide nature of the Department's work does present scenarios where access to legal marriage is not immediately available to a same-sex or, occasionally, an opposite-sex couple assigned overseas. This "marriage leave" will be available not only to employees currently enrolled in the SSDP program, but to all Foreign Service employees as follows:

- a. Employees serving overseas in a country without access to legal marriage who wish to marry may, effective 60 days after the release of this ALDAC, request up to 10 days of administrative leave for travel to the United States or a third country where they can legally marry. This administrative leave is not restricted to same-sex partners.