

Administration of Barack H. Obama, 2010

Memorandum on Extension of Benefits to Same-Sex Domestic Partners of Federal Employees

June 2, 2010

Memorandum for the Heads of Executive Departments and Agencies

Subject: Extension of Benefits to Same-Sex Domestic Partners of Federal Employees

For far too long, many of our Government's hard-working, dedicated LGBT employees have been denied equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of our Federal workforce, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies), in consultation with the Office of Personnel Management (OPM), to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

Section 1. Immediate Actions To Extend Benefits. Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

- (i) clarify that the children of employees' same-sex domestic partners fall within the definition of "child" for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;
- (ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as "family members";
- (iii) issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as "family members" for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;
- (iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339(k)(1), 8420;
- (v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523;
- (vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on "Expanded Family and Medical Leave Policies" to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood

educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs, may be used to meet the needs of an employee's same-sex domestic partner or the same-sex domestic partner's children; and

(vii) clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of "immediate family" and "dependent" appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300–304, to include same-sex domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees' spouses and their children to employees' same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees' spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees' same-sex domestic partners and their children.

Sec. 2. Continuing Obligation To Provide New Benefits. In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners' children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

Sec. 3. Monitoring and Guidance. The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form and manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

Sec. 4. Reporting. By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

Sec. 5. General Provisions. (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) authority granted by law or Executive Order to an agency, or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. Publication. The Director of OPM is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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NOTE: This memorandum was published in the *Federal Register* on June 8.

Categories: Communications to Federal Agencies : Same-sex domestic partners of Federal employees, extension of benefits, memorandum.

Subjects: Civil rights : Lesbian, gay, bisexual, and transgender persons, equality; Government organization and employees : Same-sex domestic partnerships, employee family benefits.

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