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## REPORT: Feds Extend All Possible Benefits to Same-Sex Couples, Leaving Rest to Congress

By Trudy Ring

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Attorney General Eric Holder

Since the U.S. Supreme Court struck down a key portion of the Defense of Marriage Act last year, the Obama administration has taken steps to extend federal benefits to as many same-sex couples as possible — but further progress is up to Congress, says a report issued today.

Important barriers to across-the-board equality are federal laws that prevent the extension of Social Security and veterans' benefits to many couples, notes the Department of Justice report, issued today by Attorney General Eric Holder.

The decision in *Windsor v. U.S.*, issued June 26 of last year, invalidated DOMA's ban on federal recognition of same-sex marriages. Since the ruling, the government has approved many benefits for gay and lesbian couples as long as they wed in a state that recognizes their marriage as legal, whether or not they live there. These include the ability to file joint federal tax returns, claim insurance and retirement benefits for spouses of federal employees, and spousal benefits for members of the military. But federal statutes prevent the Social Security Administration and the Department of Veterans' Affairs from applying this "place of celebration" rule, and they have to limit most benefits to couples living in states with marriage equality, according to Holder's report.

These laws have a significant impact. For instance, if a couple resides in a state that does not recognize their marriage and one spouse dies, the other spouse does not have access to Social Security survivors' benefits.

The laws cannot be changed without congressional action, and several bills to accomplish this are pending, notes the Human Rights Campaign. These include the Respect for Marriage Act, the Veteran Spouses Equal Treatment Act, Military Spouses Equal Treatment Act, Protecting

## the Freedoms and Benefits for All Veterans Act, and Social Security and Marriage Equality Act.

The administration did announce some additional steps toward equal benefits that were possible without legislative action. It has determined that Social Security survivors' benefits, lump sum death benefits, and aged spouse benefits can be made available to same-sex couples if one partner could inherit from the other partner on the same terms as a spouse under state law, says a DOJ press release. This would cover couples in civil unions or domestic partnerships in states such as Colorado, Nevada, and Wisconsin, according to HRC.

Also, the acting secretary of the VA will use his broad statutory discretion to allow any person in a committed relationship with a veteran to be buried in a national cemetery, which will allow for the inclusion of same-sex spouses, even those who lived in states that did not recognize their marriage, the DOJ release notes. And the Department of Labor has announced it will extend the Family and Medical Leave Act to cover all same-sex married couples regardless of where they live, and the Office of Personnel Management will apply the law to all federal employees in same-sex marriages.

Activists hailed the progress documented in the report but emphasized the work that needs to be done. "We are grateful to President Obama for his unparalleled leadership and support of full equality for LGBT people," said a statement issued by Kate Kendell, executive director of the National Center for Lesbian Rights. "Thanks to those efforts, same-sex couples and their children now enjoy an unprecedented degree of protection and security under federal law. At the same time, today's announcement that same-sex spouses in states that refuse to respect their marriages will be denied the social security benefits they have paid for and earned, and that LGBT veterans who have served this country will be treated as second-class citizens, underscores how far we have yet to go to achieve true equality."

"Under the President's leadership, the Obama administration has demonstrated an unwavering commitment to ensuring all committed and loving gay and lesbian couples benefit from the Supreme Court's historic ruling in Windsor last year," said HRC legal director Sarah Warbelow in a press release. "This report should serve as a clarion call for Congress to finish the job."

Evan Wolfson, president of Freedom to Marry, noted that the federal government has gone "from being the number 1 discriminator against gay people to now putting its moral and legal weight on the side of our families, the Constitution, and the freedom to marry. But it's time for Congress, and especially the Supreme Court, to finish the job."

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