

# The Respect for Marriage Act

What is it and what will it do?

January 2013

## What is the Respect for Marriage Act and what will it do?

The “Respect for Marriage Act” (RMA) is a bill that was introduced into the 112th Congress on March 16, 2011 by Congressman Nadler and Senator Feinstein as H.R.1116 and S.598. As of the close of that Congress, the bill had the support of 161 co-sponsors in the House and 33 in the Senate who believe in equal treatment of all married Americans, regardless of sexual orientation. President Obama endorsed the bill in July 2011. The Act will repeal the so-called “Defense of Marriage Act” (DOMA) and return the country to the longstanding earlier rule that states decide who can marry, and the federal government treats all married people the same no matter where they got married or where they live now.

## What is the Defense of Marriage Act (DOMA)?

DOMA is a federal law that was passed by Congress and signed by President Clinton in 1996, in response to the marriage equality litigation in Hawaii in which Lambda Legal was co-counsel. Some members of Congress were worried that, if same-sex couples won the right to marry in Hawaii, the federal government and other states might have to start honoring those marriages. They passed DOMA in an effort to prevent that.

There are two main parts of the law: Section 2 of DOMA says that Congress believes other states should be able to ignore marriages lawfully entered by same-sex couples, and treat legally-married spouses as strangers to each other. Section 3 of DOMA says that the federal government does not have to recognize or honor those marriages. DOMA does not prohibit states from allowing same-sex couples to marry—it only addresses the consequences of those marriages for purposes of other states’ laws or federal laws.

## If we are legally married, what should federal recognition and respect for our marriage mean for us?

Federal law treats people differently in a great many ways based on whether or not they are married. Here are just a few examples.

- *Social Security:* Workers who make mandatory payroll contributions from every paycheck have the security of knowing their spouse will receive a Social Security pension if the worker dies first. But married lesbian and gay workers are denied that security just because of their sexual orientation.

- *Fair federal taxation:* The laws imposing federal taxes on income and inheritance treat people differently depending on whether they are married or not. For starters, the basic rule that married couples can file their income tax returns jointly means that most heterosexual married couples file their state and federal returns jointly and the state and federal rules work together smoothly. But same-sex married couples have to prepare their income tax returns different ways if their home state respects their marriage but the federal government disregards it. That’s complicated, confusing and usually more expensive.

- *Federal taxes on spousal health insurance:* For workers with a same-sex spouse, the value of spousal health insurance benefits provided by an employer is counted as extra taxable income to the employee, even though workers with a different-sex spouse receive this important benefit with no extra federal income taxation.

- *Federal employment protections for family members:* The Family Medical Leave Act allows workers to take sick leave to care for a sick spouse, child or spouse’s child, knowing their job is secure. Married lesbian and gay workers do not have that humane federal job protection. Likewise, when an employee leaves a job, the federal COBRA law guarantees that the worker and his or her spouse can keep their health insurance coverage for 18 months. Married gay workers do not have that basic protection either.

- *Safe harbor protections for debtors:* The federal bankruptcy rules, Medicaid rules, and other federal laws that help those in serious financial distress often have “safe harbor” provisions that secure some resources and the family home when debts of one spouse threaten to leave both financially responsible spouses destitute. When a lesbian or gay spouse incurs crushing costs for nursing home care, for example, the other spouse should have the same minimal financial safety that heterosexual spouses receive under these federal laws.

## What other damage does DOMA cause?

Beyond all those tangible things, it's very upsetting to couples who are legally married to have their federal government completely disregard their marriages and families. And the message it sends to others compounds the damage—if the federal government says same-sex couples aren't really married, then others may believe they can be equally disrespectful of same-sex couples' families and of lesbians and gay men in general.

## Will passage of the RMA mean that all states will have to treat married same-sex couples the same as married different-sex couples?

No. The Respect for Marriage Act repeals the part of DOMA that tried to change the effect of the "Full Faith and Credit" clause of the U.S. Constitution and other settled rules so as to allow states to disregard same-sex couples' valid marriages. DOMA tried to create an antigay exception to the usual rule that states reliably respect couples' marriages when they cross state lines, whether or not a particular state would allow a particular couple to marry, because couples need to know with certainty that they are securely married and legally protected.

Scholars disagree about whether the "Full Faith and Credit" clause actually requires states to respect each others' marriages when their own marriage laws are different. And many experts believe this part of DOMA actually has had no legal effect. By repealing it, the Respect for Marriage Act takes the federal government back to a neutral position that respects all married couples equally and predictably for federal law purposes regardless of where they got married, without telling states which out-of-state marriages they must respect.

The Respect for Marriage Act is consistent with the position of President Obama and many other national leaders that the federal government should treat everyone fairly and equally – gay and straight alike – even though some states limit marriage to heterosexual couples only, and some offer lesbian and gay couples no legal protections at all.

## If we are in a civil union or registered domestic partnership, would the RMA make any difference to us?

This law will not require federal benefits and protections based on a nonmarital relationship status that does not exist in federal law, such as civil unions and domestic partnerships. But if a same-sex couple has entered into a civil union or domestic partnership and also has gotten married in another state or country, this law would require the federal government to treat the couple equally – as married – despite

the fact that their home state respects only the domestic partnership or civil union.

## What is next for the RMA?

The bill will be reintroduced into the 113th Congress with new bill numbers but the same text as H.R.1116 and S.598. Any important bill requires lots of public education and organizing of support before Congress will pass it on to the President's desk. Support for the Respect for Marriage Act will grow, and eventually will snowball, as we all take responsibility for explaining to people in our lives why this federal discrimination must end. It is especially important to talk with Members of Congress and ask them to join the ever-expanding effort on this issue. The growing number of co-sponsors shows that the tide is turning, but more are needed. We need YOU to help build support and momentum by calling on your Representative in Congress and your U.S. Senators to be vigorous in pushing for the solution to this unjust treatment of American families.

Lambda Legal will continue to fight for the freedom to marry nationwide. We currently are litigating cases in Illinois, New Jersey and Nevada, and are working with community leaders to advance marriage legislation in multiple states. We will continue to provide legal expertise and broad education to augment public understanding nationally and help prepare Congress to pass this essential law as quickly and as smoothly as reasonably feasible.

**Sign the "Defeat DOMA" pledge to stand with married same-sex couples across the country who are tired of their government refusing to respect their marriages.** Learn more by visiting <http://www.lambdalegal.org/petition/defeat-doma>

*Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and those living with HIV through groundbreaking litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or friend-of-the-court in hundreds of cases in state and federal courts on behalf of LGBT people who have suffered discrimination because of their sexual orientation or gender identity, including a great many cases seeking to protect and find remedies for same-sex couples and their children who have suffered severe, needless harms because their family relationships were not respected as heterosexual couples are.*