



READINESS AND FORCE  
MANAGEMENT

## ASSISTANT SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

SEP 05 2013

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND  
RESERVE AFFAIRS)  
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND  
RESERVE AFFAIRS)  
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER  
AND RESERVE AFFAIRS)  
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE

SUBJECT: Extending Survivor Benefit Plan Coverage to Same-Sex Spouses of Military  
Members and Retirees

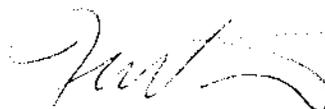
With the Supreme Court decision on June 26, 2013, declaring section 3 of the Defense of Marriage Act (DOMA) unconstitutional, the Department has been working to make the same benefits available to all spouses. This memo is part of that effort and provides guidance for interpreting entitlement to and enrollment eligibility in the Survivor Benefit Plan (SBP) program for same-sex married couples:

- a. Any claims to SBP spouse coverage for same-sex spouses of eligible participants of the SBP for periods before June 26, 2013, are not valid as the Defense of Marriage Act was still the law and in effect prior to June 26, 2013. As a result, no SBP premiums for such coverage will be charged prior to that date. Further, no SBP annuity payments for such coverage will be paid for deaths occurring before that date.
- b. The terms "him" and "her" as used in the definitions of widow and widower in 10 U.S.C. 1447(7)(A) and (8)(A) shall be interpreted to be non-gender specific. Thus, for a same-sex marriage the surviving spouse means the surviving person who, if not married to the member at the time he or she became eligible for retired pay, was married to him or her for at least one year immediately before his or her death.
- c. Effective from June 26, 2013, a person who becomes eligible to participate under 10 U.S.C. 1448 (a)(1) and is married to a same-sex partner shall have the SBP program applied as for any other married couple under section 10 U.S.C. 1448, including the requirements for spousal consent for less than full annuity coverage of the spouse.
- d. A person who was married to a same-sex partner upon becoming eligible to participate in the plan prior to June 26, 2013, and who had married that same-sex partner before June 26, 2013, shall have one year from June 26, 2013, to make a spouse election under 10 U.S.C. 1448(a)(3). Such person may not participate at less

than maximum coverage described in 10 U.S.C. 1448(a)(3) without the concurrence of the person's spouse unless they already had provided an annuity for a dependent child. If an election is not received on or before June 25, 2014, full spousal coverage shall be entered and the member shall be responsible for payment of premiums effective from June 26, 2013.

- e. A person who was not married upon becoming eligible to participate in the plan, but who married a same-sex partner before June 26, 2013, shall have one year from June 26, 2013, to make a spouse election under 10 U.S.C. 1448(a)(5). The election must be received on or before June 25, 2014, or the person shall be prohibited by law from making such election.
- f. Generally, a person who is a participant in the plan and is providing coverage under the SBP for a spouse, who later does not have an eligible spouse beneficiary may, under 10 U.S.C. 1448(a)(6), elect not to provide coverage for a new spouse in the event of a remarriage.
  - i. For a person who enters into a same-sex marriage after June 26, 2013, the election to discontinue participation under 10 U.S.C. 1448(a)(6) must be made within one year of the remarriage. If a member does not discontinue participation, then pursuant to 10 U.S.C. 1448(a)(6), spouse coverage will resume effective on the first anniversary of the marriage.
  - ii. If the remarriage took place prior to June 26, 2013, the participant has one year from June 26, 2013 to elect out of SBP. If a member does not make such an election within one year of June 26, 2013, then pursuant to section 10 U.S.C. 1448(a)(6), spouse coverage will resume effective no earlier than June 25, 2014.
  - iii. Additionally, any such person falling within the parameters of section 10 U.S.C. 1448(g), shall have one year from June 26, 2013, or the date of any marriage subsequent to that date, to elect to increase the level of coverage under 10 U.S.C. 1448(g).
- g. A person who is married to a same-sex partner on June 26, 2013, and has insurable interest coverage under 10 U.S.C. 1448(b) may terminate that coverage as provided for under that section and, if eligible, elect spousal coverage under 10 U.S.C. 1448(a)(5) as provided in paragraph d., above.

All other provisions of the SBP program as set forth in subchapter II of chapter 73 of title 10 U.S.C. shall apply equally for same-sex married partners as for other married partners.



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cc:

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