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What the Gay Marriage News Means for You

By **TARA SIEGEL BERNARD**

On Wednesday, President Obama directed the Justice Department to [stop defending the law](#) that bans federal recognition of same-sex marriages. And while the decision will — and should — be celebrated by gay couples across the country, practically speaking, their lives won't change much for some time.

After all, the move doesn't actually repeal the so-called Defense of Marriage Act. So same-sex couples will still remain strangers, for the most part, in the eyes of the federal government. Couples will still be unable to jointly file their federal tax returns, and they won't be eligible to receive Social Security benefits based on their spouse's earnings record.

Individuals will still owe extra income taxes on the value of their partner's [domestic health benefits](#). Perhaps most frightening, many individuals could still find themselves in a situation where they are not recognized as the legal spouse of their ailing husband or wife in a hospital emergency room. And [the list of inequalities](#) goes on.

But what did happen Wednesday, gay advocacy and legal experts agree, is a big step toward eventually putting same-sex couples on equal financial footing with heterosexual married couples.

“They have concluded that laws that discriminate based on sexual orientation should be presumed to be unconstitutional and those laws should be struck down by the courts unless the government can prove that those laws are necessary to advance an important and legitimate government interest,” said Jon Davidson, legal director at Lambda Legal. “That, in and of itself, is something we have been fighting for since we opened our doors. The executive branch is now saying that the courts should treat those laws as suspect.”

So given the latest development, what will it take for same-sex marriage to be recognized at the federal level — and thus eliminate many of the barriers to financial equality? “The federal government will continue to enforce the Defense of Marriage Act, and it will remain in effect until the law is either repealed by Congress or finally declared unconstitutional in court,” said Mary Bonauto, the civil rights project director at Gay and Lesbian Advocates and Defenders, known as GLAD.

Currently, there are six lawsuits winding their way through the courts where the constitutionality of the Defense of Marriage Act is at issue, Mr. Davidson said. The Justice Department said it would not defend the law in the two challenges pending in the courts

within the jurisdiction of the Second Circuit Court of Appeals.

So ultimately, it is up to the courts to decide. Only then will it become possible for, say, a legally married same-sex couple to get health insurance through their spouse's employer without having to pay extra taxes that a heterosexual spouse does not have to pay.

Some experts said that they would expect more same-sex couples to come forward with challenges of their own. "The government has set up a situation in which many more same-sex married couples may challenge the enforcement" of the act, said Nan D. Hunter, an associate dean at Georgetown Law School and legal scholarship director of the Williams Institute. "In the short term, this situation may lead to considerable confusion. There may be different rulings in the different circuits. The administration will have to decide at what point to say, 'Look, this is sufficiently clear now, we will stop enforcing the law.' "

"From the point of view of the individual couple, the most beneficial thing that could happen is an appellate court ruling in the region where the couple lives because that would be binding on the administration in terms of dealing with couples living in that region," she added. "For a period, there could be some geographic unevenness in how this issue progresses. Ultimately, the Supreme Court will likely resolve the constitutionality" of the Defense of Marriage Act.

Meanwhile, the prospects of a Congressional repeal of the act seem dim for now. Two members of Congress have started work on legislation that would repeal the act. But both measures are unlikely to survive in the near term, experts say, given the Republican majority in the House.

There are currently about 50,000 same-sex couples who have married in the United States, according to estimates calculated by the Williams Institute, a research group that studies sexual orientation policy issues. They estimate that as many as 30,000 additional couples may have married in other countries like Canada, which would bring the total to about 80,000. Another 85,000 same-sex couples have entered civil unions or domestic partnerships in states that recognize those legal relationships.

Taken together, the Williams Institute said that these figures suggest that 9 percent of same-sex couples have married in the United States, along with as many as 5 percent more in other countries, and 15 percent are in civil union-like legal relationships.

"Today was a tremendously important moral turning point, but the work of making it a legal reality in the lives of couples still remains ahead of us," said Evan Wolfson, president of Freedom to Marry, an advocacy group.