

# American Benefits Council

## NEWS RELEASE

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### **Council letter to Obama Administration urges swift issuance of guidance under DOMA decision**

WASHINGTON, D.C. — “In the aftermath of the U.S. Supreme Court’s decision to strike down key provisions of the Defense of Marriage Act (DOMA), **employers who sponsor health and retirement benefit plans for workers and their spouses are in urgent need of guidance indicating how to comply with federal law,**” American Benefits Council President James A. Klein said today.

On July 17, [the Council sent a letter](#) to the U.S. Treasury Department, Labor Department, Health and Human Services Department and Internal Revenue Service **requesting interim guidance or transition relief prior to July 22**, when the *United States v. Windsor* decision becomes effective.

As the letter states, “the threshold question is who a plan should treat as a spouse under applicable federal [tax and benefit] law.” Much of the current uncertainty stems from the fact that existing law is unclear as to whether, for purposes of the federal laws governing employer-sponsored benefits, a “spouse” only encompasses an employee’s same-sex spouse that resides in a state that recognizes same-sex marriage or whether such term includes a same-sex spouse subject to a valid marriage license regardless of the spouse’s current state of domicile. “**Any rule that is adopted must allow for the uniform administration of plans at the federal level,**” the letter reads.

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To address this matter with respect to the administration of plans and benefits across state lines, **the Council would support a rule that determines marriage by the “state of celebration” (i.e., whether an individual holds a valid state marriage license) rather than the laws applicable to their current state of domicile.** A “state of domicile” rule “would be much more difficult and expensive for benefit plans to administer,” the letter reads.

In addition, the Council’s letter identifies a number of other relevant issues that require clarification going forward, such as:

- Whether the change in law could require an employer to provide retroactive benefits or re-administer benefits previously provided under the terms of a plan;
- The need for additional time for plans to comply with the new legal and regulatory landscape;
- The treatment of employer-provided health coverage as imputed income; and
- The ability of affected employees and employers alike to seek refunds of federal income or payroll taxes paid for health coverage attributable to an employee’s same-sex spouse.

In [an earlier news release](#) immediately following the *Windsor* decision, the Council applauded the Court’s ruling but acknowledged the new challenges facing employers – particularly large, multi-state employers that sponsor employee benefits – in light of varying state laws regarding same-sex couples.

“The court’s rejection of DOMA freed employers from numerous financial and administrative burdens, but created innumerable other questions that require prompt answers,” Klein said today. “We urge the federal agencies to issue guidance as soon as possible.”

For more information on the Council’s position on DOMA, or to arrange an interview with Council policy staff, please contact Jason Hammersla, Council director of communications, at [jhammersla@abcstaff.org](mailto:jhammersla@abcstaff.org) or by phone at 202-289-6700 (office) or (202) 253-5458 (cell).

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*The American Benefits Council is the national trade association for companies concerned about federal legislation and regulations affecting all aspects of the employee benefits system. The Council’s members represent the entire spectrum of the private employee benefits community and either sponsor directly or administer retirement and health plans covering more than 100 million Americans.*

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