



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

June 2, 2010

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: JOHN BERRY
DIRECTOR

A handwritten signature in blue ink that reads "John Berry".

SUBJECT: Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees

In a June 17, 2009 Memorandum regarding Federal Benefits and Non-Discrimination, President Obama observed that "millions of hard-working, dedicated, and patriotic public servants are employed by the Federal Government as part of the civilian workforce, and many of these devoted Americans have same-sex domestic partners." He further noted that although "[l]eading companies in the private sector are free to provide to same-sex domestic partners the same benefits they provide to married people of the opposite sex," Federal departments and agencies may only do so where authorized by law. The President thus instructed heads of executive departments and agencies (agencies) to review the benefits they offer to determine whether any could be extended to the same-sex domestic partners of their employees under current law and to report the results of their review to OPM within 90 days. OPM received the agency reports and, in consultation with the Department of Justice, submitted a report to the President recommending that all of the benefits identified by agencies be extended in order to attain greater equality for the Federal workforce and to assist the Federal Government in competing with the private sector for the best and brightest employees.

Subsequently, in a memorandum dated June 2, 2010, President Obama directed agencies to extend a host of benefits to their employees' same-sex domestic partners as permitted by law. He also directed me to issue guidance to ensure consistent and appropriate implementation of his memorandum. This memorandum constitutes OPM's guidance.

I. DEFINITION OF "DOMESTIC PARTNER"

For purposes of ensuring consistent implementation of the President's memorandum, a "domestic partner" is a person in a domestic partnership with an employee or annuitant of the same sex.¹ The term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—

¹ Though Federal law does not currently recognize same-sex marriages, individuals in same-sex marriages recognized by a State or the District of Columbia are eligible to qualify for the benefits covered by the President's Memorandum if they meet the definition of "domestic partner" contained herein.

- (1) are each other's sole domestic partner and intend to remain so indefinitely;
- (2) maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) are at least 18 years of age and mentally competent to consent to contract;
- (4) share responsibility for a significant measure of each other's financial obligations;
- (5) are not married or joined in a civil union to anyone else;
- (6) are not the domestic partner of anyone else;
- (7) are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which they reside;
- (8) are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under *18 U.S.C. 1001*, and that the method for securing such certification, if required, shall be determined by the agency; and
- (9) are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Agencies may choose to secure documentation (such as a sworn affidavit) to establish the existence of a domestic partnership but they are not required to do so. In determining whether to require documentation, agencies must consider whether a similar requirement is imposed upon opposite-sex spouses, consistent with the President's intention that same-sex domestic partners be treated in the same manner as opposite-sex spouses for purposes of these benefits, to the extent permitted by law.

II. BENEFITS OFFERED ON AN AGENCY-BY-AGENCY BASIS

In their reports to OPM, many agencies identified benefits that may not be available Government-wide, but that could be extended (or already have been) to the same-sex domestic partners of agency employees (and their domestic partners' children). Section 1.c of the President's June 2, 2010 memorandum directs agencies, to the extent consistent with law, to provide to the same-sex domestic partners of agency employees (and their children) the same level of access to these benefits as is provided to spouses (and their children). To ensure the fullest possible application of the requirements of the President's memorandum

the following benefits should be made available to same-sex domestic partners² to the same extent that such benefits are available to spouses (and their children):

- credit union membership;
- access to fitness facilities;
- hardship transfers to maintain or improve the health of a domestic partner to the same extent provided to opposite-sex spouses;
- planning and counseling services (including briefings on employee pay and allowances, career counseling, retirement counseling, financial counseling, resource and referral services, planning sessions for permanent change of duty station, deployment support, parenting support groups, and elder care support groups);
- family assistance services (including adoption counseling, parenting counseling, childcare, elder care, financial planning, and home improvements);
- family and morale/wellness/recreation (MWR) events (including barbeques, golf outings, or awards ceremonies);
- access to medical treatment;
- access to lodging or allowances;
- joint consideration of transfers; and
- accidental death and dismemberment insurance.

III. BENEFITS OFFERED BY NON-TITLE 5 AGENCIES

Section 1.d of the President's June 2, 2010 memorandum further provides that those agencies not governed by Title 5, U.S. Code, should take such action as is necessary to ensure that the benefits being offered to their employees' spouses (and their children) are also offered at an equivalent level, wherever legally permissible, to their employees' same-sex domestic partners (and their children), including the domestic partner (and their children) of

² In consultation with the Department of Justice, we have concluded that there is no statutory bar that would preclude agencies from extending these benefits to their employees' same-sex domestic partners. Changes in agency regulations, policies, contracts, negotiated agreements, or other documents, however, may be necessary to implement the President's direction.

agencies' non-appropriated fund instrumentalities. The types of benefits already being offered by one or more agencies falling into this category include:

- health insurance premium reimbursement program³;
- dental insurance (including for retirees);
- vision insurance;
- dependent life insurance;
- relocation assistance and expense program;
- employment opportunities for spouse/same-sex domestic partner upon permanent transfer of employee;
- business travel accident insurance;
- receipt of transferred annual leave to provide care to same-sex domestic partner with medical emergency;
- reimbursement of up to \$250 (less taxes) for eligible expenses of employee and same-sex domestic partner, including for fitness center memberships, physical exams, and homeowners insurance; and
- expressions of sympathy policy recognizing hospitalization, illness, or death of family member, including a same-sex domestic partner, with a floral arrangement, fruit basket, or donation to charity up to \$80.

IV. CONTINUING OBLIGATION TO PROVIDE NEW BENEFITS

Agencies should pay particular attention to Section 2 of the President's June 2, 2010 memorandum. In that section, the President has imposed an on-going obligation for agencies to make sure that any new benefits they make available to their employees' spouse (or spouse's children) also be made available to employees' same-sex domestic partners (or their children). Agencies should keep this direction in mind when reviewing agency regulations, policies, collective bargaining agreements, and other potential sources of new employee benefits.

³ Under this program, employees receive reimbursement of a portion of the premium paid to insure their same-sex domestic partner. This benefit is limited to employees enrolled in the Federal Employees Health Benefit Plan (FEHBP) and whose same-sex domestic partner has no option to enroll in another insurance program, including Medicare or Medicaid. The amount of the reimbursement equals the amount that an employee with a dependent spouse would receive under FEHB. Taxes are withheld from the amount of the reimbursement.

V. REPORTING REQUIREMENTS

Section 3 of the President's June 2, 2010 memorandum authorizes me to instruct agencies to submit reports on the status of their efforts to implement the directions contained in the memorandum, in such form and manner as I prescribe. Accordingly, I am instructing agencies to include information on the results of their implementation efforts in their annual Human Capital Management Reports. For each of the benefits identified in the reports the agency submitted to OPM pursuant to the President's June 17, 2009 memorandum, as well as any additional benefits it may have identified, each agency must (a) identify any benefits it has already extended to cover same-sex domestic partners and/or their children; (b) identify each benefit that is to be extended; (c) provide an update on the status of extending the benefit; and (d) include a projected date by which the benefit will be extended. Each agency's reporting obligation shall continue until such time as it reports that all benefits covered in its reports that are capable of being extended have in fact been extended to cover their employees' same-sex domestic partners and their children, as applicable.