

Dear Commissioner Colvin,

On behalf of the Leadership Council of Aging Organizations (LCAO), a coalition of national not-for-profit organizations representing over 60 million older Americans, we are writing to share with you our views regarding the Social Security Administration's (SSA) efforts to implement the Supreme Court's decision, *United States v. Edith Schlain Windsor*, which was handed down by the Court on June 26, 2013.

Social Security is America's premiere social insurance program, providing protection to the 160 million workers who contribute annually to the program against the loss of income from retirement, death or disability. Fifty-seven million Americans receive benefits from Social Security each month, and over fifty million are covered by Medicare, keeping millions from an old age of want and deprivation.

The Supreme Court's decision in *Windsor*, which opens the door for equal benefit protections for members of same-sex married couples, is another step in the process of extending Social Security and Medicare so that these protections are broad, universal and equitable. Because of the relationship between Social Security eligibility determinations and Medicare eligibility, SSA's decisions will have an even greater impact on the health and security of older adults.

We believe that your agency and the Administration recognize the opportunities presented by *Windsor* and applaud efforts that have already been undertaken by the SSA to implement the court's decision. We note that your agency promptly issued instructions to your field office staff on how to handle inquiries about possible eligibility and that emphasized the importance of a formal application as the only way to protect individuals' rights to benefits. Similarly, we appreciate the removal of restrictive language in the directives regarding Special Enrollment Periods for Medicare beneficiaries covered under their spouse's employer-provided insurance.

We also note that the SSA has begun paying some claims for benefits while instructing offices to hold claims that involve situations where policy decisions have not yet been made. These are important first steps; however, there are a number of additional steps that must be taken in order to complete your agency's implementation of this historic decision and in carrying these steps, we encourage you to be bold, because so much is at stake.

In evaluating the options that are available to your agency in completing its implementation of the *Windsor* decision, we believe that the most important consideration is whether the policy seems fair. One of the reasons that Americans of all ages support Social Security is that, regardless of where you live, decisions about receiving benefits are based on a single, uniform national standard. Social Security employees, whether they are deciding cases in Florida or Alaska, look to the same guidance and apply the same rules. The result: similarly situated individuals receive essentially the same benefit, without regard to where they live. Medicare

benefits from the same broad-based support. Access to Medicare provides health security to Americans in the event of disability and after a lifetime of hard work.

We believe that the American people's basic sense of fairness should guide the formulation of the policy your agency establishes regarding individuals who marry in a state that authorizes same-sex marriage but reside in a state that does not recognize those unions either when working or when the higher earner spouse dies, or when either applies for benefits through the others' higher earnings record (the "number holder" or NH.) The decision you make here will be the most important factor in determining the extent to which lesbian, gay, bi-sexual and transgender (LGBT) families benefit from the *Windsor* decision. And here we urge you to let fairness be your watch word and guide

The undersigned members of the LCAO urge you to adopt policies that extend Social Security and Medicare benefits to same-sex married couples regardless of where they are living when they apply for benefits or when they die. Such policies will give the broadest possible effect to the Supreme Court's decision and will guarantee that LGBT families will qualify for Social Security benefits and Medicare on the same terms as other families. We also urge the extension of Social Security and Medicare family benefits to individuals whose relationships are based on civil unions and domestic partnerships, since people joined in those statuses may inherit intestate as would a married spouse.

We do not believe that a policy that yields eligibility to benefits in some states, while denying them in others, could be considered a fair and equitable outcome. We urge you to establish policies that mean that similarly situated individuals qualify for benefits without regard to the state of residence at the time of death or when an application is filed.

We also offer a number of additional suggestions that might strengthen the implementation that your agency has initiated.

Publicizing the effects of the *Windsor* decision is extremely important. Toward that end, we recommend that your agency identify an individual, or group of individuals, who first qualify for benefits as a result of this decision, record the facts and circumstances of these claims and the relationship on which it is based. The agency did this so well in the first days of the program and as a result we know a great deal about the first beneficiary, Ida May Fuller, and John D. Sweeney, Jr., the first person to be assigned a Social security number. We suggest the agency use this information as part of a larger campaign to publicize the availability of benefits to a community of Americans to whom many of the protections afforded by Social Security were previously barred but now are open.

We believe there are two other issues that need to be addressed promptly. The first is to amend the current instructions (CJB 13-04) which require that *all* appeals based on a same sex marriage be held rather than processed. There is no reason for continuing to hold those appeals based on a same sex marriage entered into in a state which recognizes same sex marriage where the number holder resides(d) in a same sex marriage recognition state. Continuing to hold *these* appeals when new claims with the same facts are being processed and paid is not fair -- as it penalizes those who were in the forefront of the effort to assert their rights—and is in no way necessary. We know this was not the agency's intention, but appearances do matter.

The POMS (GN 00210.100) needs to be clarified by adding Canada to the list of jurisdictions authorizing same sex marriage since many American same sex couples, such as Edie Windsor and her wife, married in Canada prior to recognition of same sex marriages in their home state. Also, the date out-of-state same sex marriages were first recognized in a state needs to be removed from the chart in the POMS since the date such marriages were first recognized is irrelevant and can only serve to confuse those who are processing these claims. If the domicile state's recognition policy were to matter at all (and we believe it should not) it would only matter at time of claim or the time of death, not before.

We believe it is important that the implementation of *Windsor* be carefully coordinated with the aging and LGBT communities. Your agency has already taken the important step of establishing points of contact within it to whom problems with implementation can be reported, and we applaud you for doing so. Periodic meetings with advocacy organizations also seem to us to be essential to a successful implementation.

We wish you and your employees the best as you endeavor to implement the fairest policies possible. With good will and cooperation among all of the organizations that have an interest in the successful implementation of *Windsor*, we are sure that this historic decision will be seen for what it is—a major achievement for Social Security and Medicare and for all Americans.