



Capabilities Overview:

**FEDERAL POLICY DEVELOPMENT**

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Extending Federal Benefits to the Same-sex Partners of Federal Employees



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## 1. INTRODUCTION

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Public Law 104-199, The Defense of Marriage Act (DOMA) defined marriage as “the legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or wife.” This Act has been the basis for denying same sex partners of federal employees many of the benefits available to heterosexual spouses.

On June 17, 2009, the President signed a Memorandum for the Heads of Executive Departments and Agencies that “requests that the Secretary of State and Director of the Office of Personnel Management (OPM) shall, in consultation with the Department of Justice, extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal Employees. It further requests that the heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, to review the benefits provided by their respective departments and agencies to determine what authority they have to extend these benefits to same-sex domestic partners of Federal employees.” These reviews are to be completed and reported to the Office of Personnel Management within 90 days. The available benefits can be lumped into three main categories: leave; travel and relocation and, insurance and retirement.

- a) Leave: the heads of Executive Departments and Agencies have the authority to establish internal policies related to the use of annual and sick leave, voluntary and emergency leave

transfer program, and funeral leave. With the exception of the Family and Medical Leave Act (FMLA) which is governed by DOMA, most non-title V agencies have flexibility to include qualified domestic partners of same sex Federal employees when developing and implementing these policies, although most use the OPM definitions of "family member" and "immediate relative." Title V agencies use the OPM definitions.

b) Travel and Relocation: The General Services Administration (GSA) is responsible for establishing travel and relocation policies for agencies covered by title V. The current Federal Travel Regulations do not include same-sex domestic partners or their children as members of an employees' immediate family. However, there is nothing in law or regulation that would preclude the GSA from expanding the definition of "immediate family" to include same-sex domestic partners and their dependent children, as was done by the Secretary of State. Non-title V agencies develop their own travel policies and have the flexibility to expand the definition of immediate family to include same-sex domestic partners and their dependent children.

c) Insurance and Retirement: There is very little that individual agencies can do on their own in this arena. The criteria for inclusion in the Federal Employees Health Benefits Program

(FEHB), Dental and Vision Program, Retirement Flexible Spending, and Workers Compensation are found in legislation. Same-sex domestic partners and dependent children are currently excluded from coverage as a result of DOMA. Although the President directed OPM to expand Long Term Health Care coverage to same-sex domestic partners, individual agencies cannot promulgate guidance or information as to how this is going to be accomplished until OPM issues final regulations. There are several areas, however, where agencies can take proactive action. These include:

- i. Educate employees on their ability to include same-sex domestic partners and dependent children on designation of beneficiary forms for life insurance, unpaid compensation, retirement contributions, etc.
- ii. Issue policies regarding the payment of Death Gratuity Payments, ensuring that employees are aware that the "Personal Representative" can be a same-sex domestic partner.

The Presidents Memorandum also directed the Office of Personnel Management to issue guidance within 90 days to all executive departments and agencies regarding compliance with, and implementation of, the civil service laws, rules and regulations, including 5 U.S.C. 2302(b) (10) which make it unlawful to discriminate against Federal Employees or

applicants for Federal employment on the basis of factors not related to job performance. Although gay, lesbian, bisexual and transgendered (GLBT) federal employees are not covered by Title VII of the Civil Rights Act of 1964, as amended, and Civil Rights Act of 1991 – Equal Employment Opportunity, agencies have the ability to include sexual orientation/gender identity in their internal non-discrimination policy, merit promotion plan and vacancy announcements. They can also establish parallel procedures to address complaints of discrimination based on sexual orientation and gender identity.

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## 2. BUSINESS CHALLENGE

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The main challenge will be the reluctance of many agencies to begin implementing the President’s Memorandum absent direct guidance from OPM. This will be especially prevalent in agencies that do not have an active Gay, Lesbian, Bisexual and Transgender Employee Association (GLOBE) group, such as the Department of Homeland Security, the Department of Defense and the Department of Veterans Affairs. Agencies with viable GLOBE employee associations will begin to receive significant pressure from them to immediately re-write current policies to include same-sex domestic partners and their children, and to include GLBT federal employees in their non-discrimination policies.

A second challenge will be for Agencies to determine what policies are impacted by the President’s Memorandum, what flexibilities they actually have and how to revise their policies to incorporate same-sex domestic partners and their children and to enhance their non-discrimination

policies to include sexual orientation and gender identity/gender expression.

A third challenge will be to communicate and educate the workforce on these policy changes.

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## 3. Solution

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FPMI can identify the policies that are impacted by the Presidents Memorandum and provide Agencies with a general subject matter list to work from when they review their current policies. For example, FPMI would identify and rewrite those leave policies in Title V agencies that could be modified to include same-sex domestic partners and their children. FPMI could do the same for non-Title V agencies, and go one step further by incorporating provisions similar to those found in the FMLA for sick leave use to care for a same-sex domestic partner and his/her children, if appropriate. FPMI would also train agency human resource specialists and provide educational training to the agencies workforce in the revised policies.

FPMI would assist agencies by updating their merit promotion policies, vacancy announcements, non-discrimination policies to include non-discrimination statements based on sexual orientation. FPMI would also assist agencies in developing internal agency “Avenues of Redress” for Equal Employment Opportunity Complaints based on sexual orientation. FPMI would provide training in these areas as well as in the provisions of 5 U.S.C. 2302(b) (10), which makes it unlawful to discriminate against Federal employees or applicants for Federal

employment on the basis of factors not related to job performance.

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#### 4. SUMMARY

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The June 17, 2009, Presidential Memorandum for the Heads of Executive Departments and Agencies places a requirement on Executive Departments and Agencies to review their internal leave and benefits policies for applicability to same-sex domestic partners, and by extension, their children, and report to OPM whether they have sufficient authority to revise said policies. The Memorandum also directs OPM to provide implementing guidance to these agencies with respect to non-discrimination based on non-job related factors.

Many agencies have Gay, Lesbian, Bisexual and Transgender Employee Association groups, who will pressure agencies to not only comply with this directive, but also to start rewriting internal agency policies to include same-sex domestic partners, and to establish firm non-discrimination policies. FPMI is in a unique position to assist agencies in the development of revised policies. FPMI is also uniquely qualified to assist in training human resource specialists and educating employees on the revised policies but also on the provisions of 5 U.S.C. 2302(b) (10).

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#### 5. ABOUT FPMI

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For more than two decades, FPMI has been working with federal government leaders to overcome human capital challenges and address transformational goals and objectives. Over the years, we have worked with most federal government agencies to ensure they have the talent they need to achieve their missions - economically, efficiently, and effectively.

FPMI Solutions, with principal offices in Alexandria, VA and Huntsville, AL is a leading provider of Human Capital Solutions to the Federal government.

FPMI's Human Capital Solutions (HCS) increase the effectiveness and efficiency of our client organizations through FPMI's Human Capital LifeCycle<sup>sm</sup> Which is built on outcome-based methodologies, ensuring our clients receive the services required to make organization critical decisions for our clients.

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#### Author Biography - IRENE "KITTI" HUARD

**DURHAM:** Kitti Durham retired from the Federal Aviation Administration (FAA) in January 2007 as the Manager, Policy Management Division, Office of Human Resource Management Programs and Policies. She had over 35 years of progressive experience in all areas of human resources. She has in-depth expertise in a wide variety of human resource programs within the Federal government in both the excepted and competitive services.

Kitti has worked with FPMI since 2007 and prior to working with FPMI, she developed the FAA's first policy manual concerning the special provisions for air traffic control retirement. She was the Manager, Policy Management Division, Federal Aviation Administration (FAA), Assistant Administrator for Human Resource Management. Kitti was a former officer with FAA-Gay, Lesbian, Bisexual and Transgender Employees Organization (GLOBE) and was a member of the Federal GLOBE Board of Directors from 1994 to 2004. As a Member of Federal GLOBE, she served as the policy expert on domestic partner benefits for same-sex federal employees. She planned and arranged national training conferences for Federal GLOBE and presented numerous training courses on federal government benefits,

prohibited personnel practices and legislation related to gay and lesbian federal employees. In April 2002 she presented Federal GLOBE concerns related to domestic partner benefits for federal employees to the Senate Democratic Steering and Coordination Committee. In April 2003 she wrote Federal GLOBE's position letter to the Office of Personnel Management concerning the implementation of the Long Term Care Insurance Program. She also developed a Comprehensive Benefits Comparison Chart depicting the differences in benefits between married federal employees and gay, lesbian and transgender federal employees for both Title V and for the Federal Aviation Administration, which is exempt from Title V provisions in all areas

except for benefits and retirement. Federal GLOBE continues to call on her expertise on domestic partner benefits for same-sex federal employees.

Prior to coming to the FAA in 1999, she was a Command Staff Advisor for the Civilian Personnel Division, U.S. Coast Guard Personnel Command. She worked for the Coast Guard from 1974 to 1999 where she served as Chief, Position and Pay Management Section, Headquarters Civilian Personnel Branch until transferring to the U.S. Coast Guard Personnel Command in March 1996. She was detailed to the position of Civilian Personnel Officer for Coast Guard Headquarters where she served from July 1995 until March 1996.

