

iMAPP Policy Brief

May 26, 2004

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1,000 FEDERAL BENEFITS OF MARRIAGE? AN ANALYSIS OF THE 1997 GAO REPORT

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ABSTRACT

A 1997 General Accounting Office (GAO) report found 1,049 legal incidents of marriage in federal law, frequently referred to as “1,049 federal marriage benefits.”

But this preliminary analysis of the GAO report reveals a more complicated story: Most of these legal provisions are not benefits per se, but ways in which married couples are treated differently than unmarried couples or individuals in federal law. In some cases they are clearly benefits to both spouses; in other cases they are more accurately described as benefits to one spouse and liabilities to the other, or benefits to couples in some cases and burdens to couples in other situations. In addition, many of these federal provisions affect only a handful of individuals or couples.

Federal law also creates clear marriage penalties for many couples, most often through means-tested eligibility requirements for Medicaid, welfare, and housing assistance which include spousal income, and also in the federal tax code.

Thus, while marriage is deeply embedded in federal law, whether federal legal provisions provide net economic marriage benefits or marriage penalties is unclear, and would likely vary substantially from couple to couple.

For these reasons, couples who marry expecting to receive “1,049 federal marriage benefits” are likely to be disappointed.

Introduction

In 1997, the General Accounting Office (GAO) identified 1,049 federal laws “in which

marital status is a factor.”² In January 2004, the GAO updated this report, identifying 1,138 incidents of marriage in federal law.³ These are often loosely referred to in the press as the 1,000 federal benefits of marriage,⁴ despite the 1997 GAO report’s disclaimer that “no conclusions can be drawn . . . concerning the effect of [a] law on married people versus single people. A particular law may create either advantages or disadvantages for those who are married, or may apply to both married and single people.”⁵

The purpose of this report is to analyze the 1997 GAO report and the 2004 update to estimate the extent to which these 1,138 federal statutes confer significant marital benefits.

In summary, we find that while there are important benefits to marriage in federal law, the majority of these 1,138 statutes now described as marriage benefits are more properly described as legal “incidents” of marriage: they may benefit married couples in some circumstances and impose liabilities on married couples in others; or they may be benefits to one spouse and impose liabilities on the other spouse. Other statutes are targeted legal benefits to marriage, but they affect very few individuals and are unlikely to be socially significant, in the sense of affecting marriage decisions or providing advantages to married couples generally. In addition, the federal code is replete with indirect marriage penalties (arising primarily

out of the tax code or income-restrictions on eligibility for federal benefits) that must be taken into consideration in evaluating the practical benefits of marriage in federal law.

The 1997 GAO Report (and 2004 Update)

The first GAO report on marriage in federal law was prompted by a request from Rep. Henry Hyde (R-IL), shortly after adoption of the Defense of Marriage Act,⁶ seeking an analysis of all “federal laws in which benefits, rights and privileges are contingent on marital status.”⁷ However, it was later agreed that the GAO would perform the broader and less detailed analysis of statutes in which marital status was “a factor,” based simply on a search of the federal statutes for relevant terms.⁸

How many of the 1,138 federal statutes which refer to marriage actually confer a benefit or privilege on married couples?

The GAO reports identify 13 major categories of statutes in which marital status is a factor.

Taxation (198 statutes). In 1997, the GAO identified 179 tax laws which mentioned marital status; by 2004 the total increased to 198 statutes. In 1996, shortly before the first GAO report on the benefits of marriage, the GAO published a separate analysis of marital status and income tax liability, finding 59 instances in which income tax liability depends on one’s marital status.⁹ Of these 59 statutes, the GAO found “all but 3 of the 59 income tax provisions we identified could result in a marriage penalty or a marriage bonus, depending on the individual circumstances of the taxpayer.”¹⁰ In such cases, a benefit was most likely to run to single-earner married couples, while a dual-earner married household with two comparable incomes was most likely to incur a marriage penalty.

Legislation adopted in 2001 was intended to ameliorate the “marriage penalty” in the tax code, gradually increasing the standard deduction for married couples, broadening the 15% tax bracket for married couples, and adjusting

the earned income tax credit such that most married couples will eventually pay no more in taxes than would similarly situated single adults.¹¹ These provisions are being gradually implemented through 2010, at which time the provisions expire and are scheduled to revert to pre-2001 levels.¹²

Current law provides a significant marital benefit in estate taxes, permitting an individual to transfer property tax-free to his or her surviving spouse at death. This benefit applies only to married couples with large estates (currently over \$1.5 million), and will continue to diminish until the estate tax is entirely repealed in 2010.¹³

Federal Civilian and Military Service Benefits (287 statutes). The statutory provisions of this category extend employee benefits to the spouses of federal military and civilian employees. Often duplicated throughout the different chapters of the code, these provisions provide various benefits for the President, Vice President, Members of Congress, civilian employees, military personnel, Foreign Service officers, CIA employees, Lighthouse Service employees, and members of the Coast Guard.¹⁴ Specific benefits provided include health insurance coverage, survivor benefits, pension benefit eligibility, priority for receipt of final paycheck or insurance benefits of employees who die without designating a beneficiary, eligibility for per diem expense reimbursements, and unpaid leave to care for a spouse with serious health problems.¹⁵ Additional benefits unique to military families may include commissary privileges and transitional services for spouses of employees leaving the military.¹⁶

Veterans’ Benefits (104 statutes). The 104 statutes in this category provide spousal eligibility for virtually all the benefits of military service, including: veterans’ pensions, medical care, nursing home care, burial rights, educational assistance, and indemnity compensation for service-related deaths.¹⁷ Not all of these sections confer benefits on the basis of marriage, however. At least two sections impose further

qualifications, limiting the eligibility or amount received by a spouse.¹⁸ Two other provisions establish benefits for children of veteran where there is no surviving spouse.¹⁹ Numerous provisions, such as those providing that benefit decisions made by the Secretary of Veterans Affairs are final,²⁰ setting forth guidelines for determining a veteran's pay grade,²¹ or providing that determinations of a veteran's eligibility for Social Security are to be made by the Social Security Administration,²² are purely administrative in nature, and impose neither benefit nor burden on marriage.²³ An additional nine sections provide benefits for surviving spouses of veterans from the Civil War, Indian War, and Spanish-American War – benefits unlikely to have any substantive impact on couples marrying today.²⁴

Social Security and related programs (106 statutes). The 106 statutes in this category create three distinct benefits which run to married persons on the basis of their marital status, balanced with at least 3 distinct marriage penalties.²⁵ The marriage benefits include eligibility for some couples for spousal social security benefits,²⁶ Medicare coverage,²⁷ and Medicaid coverage.²⁸ On the penalty side, for Medicaid coverage, like TANF welfare benefits and housing assistance, a spouse's income and home ownership is counted toward eligibility requirements, potentially disqualifying individuals otherwise qualified for such assistance.²⁹

Supplemental security income statutes are likely to benefit some couples (primarily single-earner households) but penalize others (two-earner households with similar income levels).³⁰ Other statutes included in this category are generally neutral with respect to their economic impact on married couples: food stamps (with eligibility based on "household income" rather than marital status),³¹ statutes promoting abstinence education,³² a statute consenting to application of state laws withholding income of government employees who owe child or spousal support,³³ and statutes creating the

National Adoption Information Clearinghouse,³⁴ the National Commission on Social Security,³⁵ and the National Commission on Children.³⁶

Private Employee Benefits Regulation (72 statutes). The seventy-two provisions in this category regulate private employer-sponsored employee benefits plans, provide for continuation of health benefits after death or divorce of an employee, and establish minimum family medical leave guarantees. The Family Medical Leave Act requires covered employers to offer employees up to 12 weeks of unpaid leave to care for a spouse or other family member.³⁷ Other provisions guarantee spousal access to pension and health insurance benefits offered by covered employers.³⁸

Industry-specific benefits may also apply, including black lung disease benefits for coal miners,³⁹ death and disability payments for harbor and longshore workers,⁴⁰ railroad pension plans,⁴¹ and recovery for employee injury due to railroad negligence.⁴² Other provisions under this section exclude spouses from certain protections of the Fair Labor Standards Act and National Labor Relations Act when working for a spouse, or when two spouses are the only regular employees of a business, or in agricultural settings.⁴³

Federal Natural Resources (63 statutes). More than 40 of these provisions extend life estates to individuals and their spouses owning homes on property which the government has purchased for national parks, monuments, battlefields, and other federal lands.⁴⁴ Other statutory provisions in this category consider interests of both husband and wife in determining property ownership eligibility for government leases of irrigation water and mineral rights.⁴⁵

Crimes and Family Violence (47 statutes). Federal laws governing domestic violence explicitly refer to violence directed toward one's spouse "or intimate partner," making them marriage-neutral.⁴⁶ Attempts to kill the spouse of a protected federal official are federal crimes.⁴⁷ Victims of overseas

terrorism and their survivors are entitled to seek treble damages in a civil action.⁴⁸ Other statutes that are not benefits to marriage per se prohibit false claims of marital status, or continued receipt of marital benefits after eligibility has expired.⁴⁹ Still other statutes in this section provide for study of questions related to domestic violence and sexual assault.⁵⁰

Trade, Commerce and Intellectual Property (54 statutes). The provisions included in this category provide a wide variety of marital benefits including joint filing for bankruptcy protection (saving filing fees),⁵¹ survival of alimony rights after bankruptcy,⁵² limitation on mortgage “due-on-sale” provisions in cases of sale between spouses,⁵³ and surviving rights in copyrighted work.⁵⁴ On the other hand, the law also includes spouses under investment regulations governing investment advisors and “interested persons,”⁵⁵ regulates garnishment of wages for alimony payments,⁵⁶ and includes spousal sales under a federal program designed to promote fresh cut flowers and greens.⁵⁷

Immigration (51 statutes). Subject to a handful of exceptions, spouses of immigrants and legal aliens are generally entitled to receive preferred immigration consideration.⁵⁸ Other provisions in this category protect against fraudulent use of the marital relationship in order to gain immigration preferences.⁵⁹ Also included in this category are provisions governing eligibility for means-tested public benefits.⁶⁰ As with Medicaid and TANF benefits, when aliens are eligible for benefits, spousal income is also included for purposes of determining eligibility.

Federal Loans, Guarantees, and Agriculture Payments (34 statutes). Eligibility and repayment schedules for many federal loan programs are based on the joint income of the applicant and his or her spouse, potentially disqualifying otherwise eligible individuals.⁶¹ These statutes create marriage penalties not marriage benefits. Similarly, laws limiting the amount of crop

support payments payable to an individual treat a husband and wife as a single person, creating marriage penalties.⁶² On the benefit side, “family farms,” defined as those in which a majority interest is held by persons related by blood or marriage, may be eligible for certain agricultural loans.⁶³

Financial Disclosure/Conflicts of Interest (30 statutes). Provisions scattered throughout 16 titles of the U.S. Code include spouses within financial disclosure and conflict of interest regulations governing Members of Congress, the President and Vice President, Post Office officials, employees of Washington D.C. government, certain government contractors, and employees of executive, legislative, and judicial agencies, in addition to various councils, foundations and boards.⁶⁴

Indians (20 statutes). The provisions of this category govern descent and distribution of Indian property to non-Indian spouses⁶⁵ and eligibility for Indian Health Services.⁶⁶

Miscellaneous Laws (72 statutes). Fourteen statutes in this category prohibit discrimination on the basis of marital status, which are normally considered a protection for single people.⁶⁷ Other statutes charter various patriotic societies, such as the Gold Star Wives of America and the Navy Wives Clubs of America.⁶⁸ Also included in this category are statutes limiting federal financing of presidential election campaigns on the basis of personal funds to campaigns in which the candidate and his or her immediate family has contributed not more than \$50,000.⁶⁹

Conclusion

Laws about marriage undoubtedly serve important social functions,⁷⁰ but describing all federal marriage laws as “benefits” is misleading. While marriage is deeply embedded in American law, the consequences of marriage in federal law are complex and difficult to untangle. Multiple statutes often combine to create a single benefit. Other statutes impose marriage penalties, while many statutes once intended to provide marital benefits may now

penalize dual income families. Still other of these statutes provide neither a benefit nor a liability based on marital status.

While a detailed estimate of the economic impact of each of these 1,138 statutes on unmarried couples or same-sex couples is beyond the scope of this analysis, a preliminary analysis clearly shows that the claim there are “1,138 federal marriage benefits” is simply incorrect.

If the belief that exclusion from “1,138 federal benefits” of marriage imposes a serious hardship on couples unable to marry is to be used as the basis for new public policy, a more serious, comprehensive and detailed effort by the GAO or some other

competent government research body to analyze these costs and to determine the net likelihood of marriage benefits versus marriage penalties in federal law for most couples is needed.

Meanwhile, because (with the exception of spousal health insurance benefits) the clearest financial marriage benefits are concentrated towards the end of life, and because even these are not distributed to all or even most married couples, federal marriage laws are unlikely to act as an important economic incentives to marry. Couples who marry expecting to receive “1000 federal marriage benefits” are likely to be disappointed.

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² GAO/OGC-97-16 (Jan. 31, 1997), Letter from GAO Associate General Counsel Barry Bedrick to the Hon. Henry Hyde, dated January 31, 1997.

³ GAO-04-353R, Defense of Marriage Act (January 23, 2004), letter from GAO Associate General Counsel Dayna K. Shah to the Hon. Bill Frist, dated Jan. 23, 2004. To obtain these numbers, the GAO compiled a list of all statutes containing words such as *marriage*, *married*, *spouse*, and *widow*. See GAO/OGC-97-16 at pp. 1-2 (Jan. 31, 1997).

⁴ Richard Lacayo, *For Better or For Worse?* TIME MAGAZINE, March 8, 2004, at 26 (“[President George Bush and Senator John Kerry] both oppose gay marriage and would oppose extending the 1,138 federal rights and privileges to gay couples, but support the right of states to grant civil unions.”); see also, Dennis M. Mahoney, *Ex-Local Minister Calls Gay Marriages Just*, COLUMBUS DISPATCH, April 2, 2004, at 04E (“There are over 1,000 benefits that come with civil marriage that are recognized by state and federal government that we don't have access to,” [Rev. Kay Greenleaf] said.”); Chuanpis Santilukka, *Same-Sex Benefits Key to Marriage Debate*, ST. CLOUD TIMES, March 24, 2004, at 1A (“In 1997, congressional accountants identified 1,049 federal laws that gave benefits, rights or privileges to married couples.”); Evelyn Nieves & Jim VandeHei, *Kerry Backs Benefits for Legally United Gays*, WASHINGTON POST, March 4, 2004, at A6; Dean E. Murphy, *For a Day, Same-Sex Pairs Get a Warm Reception*, NEW YORK TIMES, Feb. 23, 2004, at A14 (quoting a woman who with her lesbian partner, had recently obtained a marriage license in San Francisco); Marriage Equality USA, *1,049 Federal Rights*, available at http://www.marriageequality.org/facts.php?page=1049_federal.

⁵ GAO/OGC-97-16 at 2.

⁶ Pub. L. 104-199, 100 Stat. 2419 (Sep. 21, 1996).

⁷ GAO/OGC-97-16 at 1.

⁸ *Id.* The report is also limited due to the fact that the analysis does not take into account statutes which may describe benefits contingent upon marriage without using marital terminology (e.g., statutes regulating joint income tax filing).

⁹ “Tax Administration: Income Tax Treatment of Married and Single Individuals,” GAO/GGD – 96-175 (September 3, 1996).

¹⁰ *Id.* at 3.

¹¹ Greg A. Esenwein, “Marriage Tax Penalty Relief Provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001,” Congressional Research Services (Jan. 30, 2003).

¹² *Id.* at 1.

¹³ Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (June 7, 2001). Like the income tax provisions, the repeal of the estate tax is currently scheduled to expire after 2010. If the repeal is not made permanent by Congress, reinstatement of the estate tax would reinstate this marriage benefit.

¹⁴ *See, e.g.*, 3 U.S.C. § 105(e) (President); 3 U.S.C. § 106(c) (Vice President); 2 U.S.C. § 36a (Congress); 5 U.S.C. § 8401 et seq. (federal civilian employees); 10 U.S.C. § 1079 (military); 22 U.S.C. § 4044 et seq. (foreign service); 50 U.S.C. § 2001 et seq. (Central Intelligence Agency); 33 U.S.C. § 771 (Lighthouse Service); 14 U.S.C. § 498 (Coast Guard).

¹⁵ *See, e.g.*, 5 U.S.C. § 8901 et seq. (health insurance); 5 U.S.C. § 8441 et seq. (survivor annuities); 5 U.S.C. § 8331 et seq. (civil service retirement); 5 U.S.C. § 5582 (priority for receipt of insurance proceeds); 5 U.S.C. § 5724a (per diem relocation expenses); 5 U.S.C. § 6382 (family and medical leave).

¹⁶ *See e.g.*, 10 U.S.C. § 1062 (commissary benefits for certain former spouses); 10 U.S.C. § 1144 (employment assistance).

¹⁷ *See, e.g.*, 38 U.S.C. § 1501 et seq. (pension benefits); 38 U.S.C. § 1701 et seq. (medical and nursing home care); 38 U.S.C. § 3500 et seq. (educational assistance); 38 U.S.C. § 1301 et seq. (compensation for service-related deaths).

¹⁸ *See, e.g.*, 38 U.S.C. §§ 1122, 1304.

¹⁹ 38 U.S.C. §§ 1313, 1533.

²⁰ 38 U.S.C. § 511.

²¹ 38 U.S.C. § 1302.

²² 38 U.S.C. § 1332.

²³ *See also, e.g.*, 38 U.S.C. § 1503 (determinations with respect to annual income); 38 U.S.C. § 5111 (commencement date of award benefits payments); 38 U.S.C. § 5120 (rounding down of pension rates); 38 U.S.C. § 6103 (penalty for fraudulent benefits claim).

²⁴ 38 U.S.C. §§ 1532-1537, 1541-1543.

²⁵ This analysis does not attempt to quantify or compare the relative impact of the benefits or burdens created by these statutes.

²⁶ 42 U.S.C. § 402 (old-age and survivors insurance benefit payments).

²⁷ 42 U.S.C. § 1395i-2 (eligibility for discounted Medicare insurance premiums).

²⁸ 42 U.S.C. § 1396a (eligibility for Medicaid coverage).

²⁹ *See, e.g.*, 42 U.S.C. § 1396a (setting “family income” eligibility limits for Medicaid); 42 U.S.C. § 1437a (setting “family income” eligibility limits for low-income housing assistance); 42 U.S.C. § 604 (including spouse’s home ownership in definition of “first-time home buyer”).

³⁰ 42 U.S.C. § 1382 (married couple benefits are greater than, but less than double, individual benefits) (like Medicaid or housing assistance, SSI benefits also consider a spouse’s income for eligibility purposes).

³¹ 7 U.S.C. § 2014.

³² 42 U.S.C. § 710.

³³ 42 U.S.C. § 659.

³⁴ 42 U.S.C. § 679a.

³⁵ 42 U.S.C. § 907a.

³⁶ 42 U.S.C. § 1320b-9.

³⁷ 29 U.S.C. § 2612.

³⁸ *See, e.g.*, 29 U.S.C. § 1055 (survivor annuity for surviving spouse); 29 U.S.C. §§ 1161, 1167 (including covered spouse within definition of “qualified beneficiary”). 29 U.S.C. § 1056 also exempts qualified domestic relations orders (payable to a former spouse or family member) from the anti-alienation provisions of ERISA.

³⁹ 30 U.S.C. § 901 et seq.

⁴⁰ 33 U.S.C. § 901 et seq.

⁴¹ 45 U.S.C. § 231a.

⁴² 45 U.S.C. § 59 (cause of action accruing to employee survives for benefit of spouse).

⁴³ *See, e.g.*, 29 U.S.C. § 213 (exempting certain spouses from provisions of Fair Labor Standards Act); 29 U.S.C. § 152 (excluding persons employed by a spouse from the definition of “employee” in the National Labor Relations Act).

⁴⁴ *See, e.g.*, 16 U.S.C. § 45f (Mineral King Valley, part of Sequoia National Park); 16 U.S.C. § 79d (Redwood National Park); 16 U.S.C. § 90b-2 (North Cascades National Park); 16 U.S.C. § 159g (Saratoga National Historical Park).

⁴⁵ 30 U.S.C. § 28f (liability for federal mining fees); 30 U.S.C. § 1304 (government mineral rights); 43 U.S.C. §§ 390aa, 390dd (eligibility for irrigation water).

⁴⁶ 18 U.S.C. § 2261 (interstate domestic violence).

⁴⁷ *See, e.g.*, 18 U.S.C. § 115 (threatening or injuring the family member of a federal official).

⁴⁸ 18 U.S.C. § 2333.

⁴⁹ 42 U.S.C. § 1307.

⁵⁰ *See, e.g.*, 42 U.S.C. § 3796gg et seq. (grants to combat violent crimes against women); 42 U.S.C. § 14014 (report on confidentiality of addresses for domestic violence victims); 42 U.S.C. § 10701 (creation of State Justice Institute).

⁵¹ 11 U.S.C. § 302.

⁵² 11 U.S.C. § 523.

⁵³ 12 U.S.C. § 1701j-3 (preemption of due-on-sale provisions).

⁵⁴ 17 U.S.C. § 304.

⁵⁵ 15 U.S.C. § 80a-2 (including “immediate family” within definition of interested persons).

⁵⁶ 15 U.S.C. § 1673.

⁵⁷ 7 U.S.C. §§ 4311, 6805.

⁵⁸ *See, e.g.*, 8 U.S.C. § 1430 (naturalization of persons married to a U.S. citizen); 8 U.S.C. § 1151 (exempting immediate family members from immigration quotas); 8 U.S.C. § 1158 (giving spouse and children same status as individual granted asylum).

⁵⁹ See, e.g., 8 U.S.C. § 1451 (revocation of naturalization).

⁶⁰ 8 U.S.C. § 1612 (qualified aliens not eligible for specified federal programs unless, *inter alia*, spouse or child of U.S. active duty or retired military personnel).

⁶¹ See, e.g., 20 U.S.C. § 1078-3 (federal consolidation loans); 20 U.S.C. § 1087e (repayment schedule for student loans based on joint income for married couples); 20 U.S.C. § 1087nn et seq. (need analysis for student loans).

⁶² 7 U.S.C. § 1308.

⁶³ See, e.g., 7 U.S.C. § 1922 (real estate loans); 7 U.S.C. § 1941 (operating loans); 7 U.S.C. § 1961 (emergency loans).

⁶⁴ See, e.g., 2 U.S.C. § 31-2 (gifts and travel for members of Congress); 5 U.S.C. § 3110 (restrictions on appointment/employment of relatives by public officials); 5 U.S.C. § 7351 (gifts to superiors); 7 U.S.C. § 1986 (Department of Agriculture); 16 U.S.C. § 1852 (Regional Fishery Management Councils); 7 U.S.C. § 2008j (National Sheep Industry Improvement Center); 22 U.S.C. § 3944 (Foreign Service appointments); 28 U.S.C. § 455 (disqualification of judges).

⁶⁵ See, e.g., 25 U.S.C. § 181 (rights of white men marrying Indian women; tribal property).

⁶⁶ See, e.g., 25 U.S.C. § 1680c (spouses of Indians not otherwise eligible for health services if governing body determines all such spouses are eligible).

⁶⁷ GAO/OGC-97-16, at p.13; see, e.g., 5 U.S.C. § 7202; 22 U.S.C. § 4115.

⁶⁸ See, e.g., 36 U.S.C. § 57a (Marine Corps League); 36 U.S.C. § 113 (Veterans of Foreign Wars); 36 U.S.C. § 633 (Legion of Valor); 36 U.S.C. § 763 (Veterans of World War I); 36 U.S.C. § 1601 (Gold Star Wives); 36 U.S.C. § 2801 (Navy Wives Club); 36 U.S.C. § 5201 (National Fallen Firefighters Foundation).

⁶⁹ 26 U.S.C. § 9004.

⁷⁰ For a discussion, see e.g., Maggie Gallagher, *Rites, Rights and Social Institutions: Why and How Should the Law Support Marriage?*, 18 NOTRE DAME J. OF L. & PUBL. POL'Y 225 (2004).