

**DOMESTIC PARTNER BENEFITS: FAIR POLICY AND
GOOD BUSINESS FOR THE FEDERAL GOVERNMENT**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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DOMESTIC PARTNER BENEFITS: FAIR POLICY AND GOOD BUSINESS FOR THE FEDERAL GOVERNMENT

THURSDAY, OCTOBER 15, 2009

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, and Collins.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning, and welcome to the hearing. Today, our Committee will hear testimony on S. 1102, the Domestic Partnership Benefits and Obligations Act, which Senator Collins and I introduced last year and again earlier this year to bring equity to Federal workers and to strengthen the workforce that serves the American people.

We are holding this hearing as part of the Committee's responsibility under Senate rules for the civil service of our Federal Government.

Although we conducted a hearing on this legislation during the last Congress, we felt it would be useful to revisit the matter this year particularly to give the new Administration an opportunity to express its views on S. 1102. And in that regard, we are pleased to welcome the new Director of the Office of Personnel Management (OPM), John Berry. We are also going to hear from Dr. William Hendrix of Dow Chemical, which is typical of Fortune 500 companies in that it provides benefits to same-sex partners of its employees. And first we will hear in a few moments from our colleague from the House, Tammy Baldwin, of Wisconsin, who has sponsored companion legislation in what over here we love to call "the other body."

Senator Collins and I introduced this bill because we believe it is the fair and right thing to do, and also because we believe it makes practical sense for the Federal Government as an employer. Particularly as we approach a generational change in the Federal workforce that will see the retirement of approximately one-third of all Federal employees, it seems to us to be just plan sensible that we do all we can to attract and retain the "best and the brightest" to serve in the Federal Government in the years ahead,

(1)

and we are convinced that this legislation will help us accomplish that.

Our bill would provide that same-sex partners of Federal employees have equal access to their partners' employee benefit programs. They would be eligible to receive health benefits, long-term care, family and medical leave, Federal retirement benefits, and any other benefits for which the spouses of traditionally married employees are eligible. Federal employees and their domestic partners would have the same legal responsibilities that apply to married employees and their spouses, such as anti-nepotism provisions, financial disclosure requirements, and conflict-of-interest rules.

The Williams Institute, at the University of California, Los Angeles (UCLA), estimated that, as of 2007, over 34,000 Federal workers live in committed relationships with same-sex partners, and of that number, over 30,000 have partners who are not Federal employees. These Federal employees have, therefore, been forced to choose between their commitment to public service and their commitments to their families and have been forced in that sense to accept fewer protections for their families—essentially less compensation—than other Federal employees or than they could receive at many private employers.

An estimated 18.4 percent of all employees' compensation, in fact, comes in the form of benefits, including benefits for family members. Therefore, employees who are not afforded equal benefits for their families are essentially paid less than everyone else is.

We often hear people say that the government should be run like a business. There is truth to that. On the other hand, it is also true that government and businesses have different purposes and goals. But in this case, I do think government has a lot to learn from private sector business models.

The fact is that today—this is a very significant number, and I am going to say it slowly—almost 10,000 private sector companies of all sizes provide benefits to domestic partners and more than half—59 percent—of all Fortune 500 companies do so. Among them are famous names like Disney, General Electric, IBM, the Chubb Corporation, Lockheed Martin, Duke Energy, and Dow Chemical, which will be represented today. I presume that these companies provide domestic partner benefits not just because it is the right thing to do but also because they have determined that such employee management practices make good business sense.

The fact is also that the public sector is catching up. Currently, the governments of 22 States, including my home State of Connecticut, and about 154 local jurisdictions provide domestic partner benefits, as do over 300 colleges and universities.

In June of this year, President Obama announced that his Administration would extend certain identified benefits to eligible same-sex domestic partners of Federal employees, but that he could do so only to the extent possible by executive action under existing law. The State Department promptly extended certain important benefits to same-sex partners of employees serving overseas, such as the use of medical facilities and inclusion in emergency evacuation. OPM has also proposed that sick leave and long-term care insurance benefits can be extended administratively. But Federal legislation, such as that which Senator Collins and I have intro-

duced, is really necessary to provide to Federal employees and their same-sex partners the benefits that are available to married employees and their opposite-sex spouses and that provide the bedrock of any modern employee-benefit program.

Will this add to the cost of providing Federal employee benefits? The answer is yes. How much? Well, that is what we are looking forward to hearing from Mr. Berry today. Of course, then we all have to make a judgment, which we have made, which is: Is it worth it? And I believe in many ways it is.

The Domestic Partnership Benefits and Obligations Act will balance the scales of justice, but, again, it will also help the Federal Government be the best it can be, and that is why I am proud to cosponsor this legislation with Senator Collins, and I look forward to her opening statement now.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman. I appreciate very much your important leadership on this issue, and I am very pleased that our House colleague, Representative Baldwin, is able to join us today.

The title of this hearing really says why we have introduced this bill. The title of this hearing is "Domestic Partner Benefits for Federal Employees: Fair Policy and Good Business." It aptly describes why we believe this legislation is necessary.

When it comes to employment, the Federal Government must compete with the private sector in attracting the most qualified, skilled, and dedicated employees. Today, health, medical, and other benefits are a major component of any competitive employment package.

As the Chairman has explained, the Domestic Partnership Benefits and Obligations Act, which we have introduced, would give a Federal employee and his or her domestic partner the same benefits that are available to married Federal employees.

The Federal Government already faces a two-pronged challenge in attracting and retaining talented and dedicated employees.

The first challenge comes from the private sector. As the Chairman has pointed out, increasingly private sector employers are offering these kinds of benefits as standard fare. Among the Fortune 500 companies, domestic partner benefits are becoming commonplace. According to the Office of Personnel Management, nearly 60 percent of the Fortune 500 companies, including some of our top Federal contractors, extend employment benefits to domestic partners.

But, indeed, if you look more broadly, as the chart before us demonstrates,¹ it is not just the largest companies. We are finding that increasingly businesses of all sizes are offering equal benefits, and the reason is simple. They want to have a competitive package to attract and keep the very best employees.

The second challenge facing the Federal Government comes from the potential wave of Federal employee retirements in the next few years. Approximately 60 percent of the Federal workforce will be eligible for retirement over the next decade. If the Federal Govern-

¹The chart referenced by Senator Collins appears in the Appendix on page 25.

ment fails to attract or retain employees because of a lack of competitive benefits, then the impact of these retirements will be magnified.

I recall last year at our hearing we heard from a Foreign Service Officer who was leaving the Foreign Service over just this issue. We cannot afford that exodus of talent.

As we learned at our hearing on this bill during the last Congress, the private sector offers domestic partner benefits as part of its strategy for building a stronger workforce. These benefits help foster a sense of loyalty between the employees and the organization and create a more stable and productive work environment.

Many State and local governments also have extended employee benefits to domestic partners in committed relationships. Like Connecticut, the State of Maine offers benefits to its State employees who are in committed domestic partnerships.

If the Federal Government is to compete with the private sector as well as with State and local governments for the most talented members of our workforce, and if our goal is to create a loyal, dynamic Federal workforce for the future, then we simply must be able to offer competitive benefits.

In that regard, I would note that the Human Rights Campaign's testimony points out that nearly 13 percent of employees' compensation comes in the form of insurance and retirement benefits. So for not providing those benefits equally, we are really short-changing some of our employees.

Again, Mr. Chairman, thank you for your leadership and for holding this hearing today. I believe that our legislation will help to promote a strong Federal workforce.

Chairman LIEBERMAN. Thanks very much, Senator Collins.

We are really pleased now to welcome our colleague from the House, Congresswoman Tammy Baldwin, representing the 2nd congressional district of the great State of Wisconsin.

I just had a flashback, I believe, being at a Milwaukee Brewers' game with you some years ago.

Ms. BALDWIN. That is an accurate flashback. [Laughter.]

Chairman LIEBERMAN. Thank you for validating that.

It is good to see you. Thanks for taking the time to come over, and that is why we wanted to give you the opportunity to speak first and on a separate panel, and then we will let you go back to the House because I know you have another committee meeting going on now. But thanks for your leadership on this issue and others in the House. We welcome you.

**TESTIMONY OF HON. TAMMY BALDWIN,¹ A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WISCONSIN**

Ms. BALDWIN. Thank you, Mr. Chairman, and Ranking Member Collins, for affording me the opportunity to testify, for having this historic hearing, and for your leadership on the Domestic Partnership Benefits and Obligations Act. I very much appreciate this opportunity, and I, too, want to add my appreciation of the members of your second panel—OPM Director John Berry and Dr. William

¹The prepared statement of Ms. Baldwin appears in the Appendix on page 32.

Hendrix from Dow Chemical Company, showing leadership in the private sector on this important issue.

As my colleagues on this Committee know, the Federal Government employs more than 1.8 million civilian employees, making it the Nation's largest employer. Historically, the Federal Government has been a leader in offering important benefits to its employees. But today we are lagging behind, and this is particularly true regarding the extension of benefits to employees with same-sex partners.

As it stands, some Federal employees do not receive equal compensation and benefits for their equal contributions. And the Federal Government is not keeping pace with leading private sector employers in recruiting and retaining top talent.

Mr. Chairman, you have outlined in your opening statement a lot of the progress made in the private sector, as did you, Ranking Member Collins, and I will not repeat those statistics that are revealed in this chart and others. I would just share one anecdote from my own district, and that is that the University of Wisconsin and the State of Wisconsin did not have any domestic partnership laws until very recently, until this year. And a couple of years ago, we lost an engineering professor to another university that did offer domestic partnership benefits because of his feeling that the lack of those policies was unjust. He brought with him to this new university his \$3.4 million engineering grant, and the estimate of that loss would have covered the whole cost of implementing domestic partnership policies in the University of Wisconsin system. And so one anecdote, not a scientific study, of what difference these policies do make to retaining great talent. And Ranking Member Collins referenced Ambassador Michael Guest and his decision that was a very painful one for him to leave the Foreign Service because of the lack of domestic partnership protections.

Under the Domestic Partnership Benefits and Obligations Act, a Federal employee and his or her same-sex domestic partner who are not related by blood and are living together in a committed, intimate relationship would be eligible to participate in Federal retirement benefits, life insurance, health benefits, workers' compensation, and family and medical leave benefits to the same extent as married employees and their spouses. These employees and their domestic partners would likewise be subject to and assume the same obligations that are applied to married employees and their spouses.

I want to make it very clear that this bill has very strong anti-fraud provisions, requiring employees to file an affidavit of eligibility in order to extend benefits to their domestic partner, and this is significant especially considering that we do not require married employees to show any documentary evidence of their marriages when claiming spousal benefits.

The penalties for fraudulent claims for domestic partners would be the same as current penalties for fraudulent claims of marriage. For example, intentional false statements on the Federal Employee Health Benefits form is punishable by a fine of up to \$10,000 or imprisonment of up to 5 years, and the same would apply under this legislation.

Mr. Chairman, I appear before you today both as the lead author of this legislation in the House of Representatives, but also as a lesbian Federal employee who has been in a committed relationship with my partner, Lauren, for over 13 years. Over the years, Lauren and I have examined the differences between my benefits and my ability to provide for her compared to the benefits enjoyed by my straight and married colleagues in the Congress.

Some quick number crunching would demonstrate that the difference between my health benefits and yours with regard to just that benefit alone over the course of my tenure in Congress is measured in five figures. Although the Federal Government offers its employees and their dependents more than 300 health insurance plans and subsidizes health insurance premiums, I am not eligible to cover Lauren under any of these plans like my straight married colleagues can. And this is a significant inequality.

Although I can designate Lauren as a beneficiary for my life insurance, my Thrift Savings Plan, and any unpaid compensation in the event of my death, if for some reason I had not taken the extra step of completing that paperwork, the order of precedence would have prevented Lauren from receiving those savings. And, heaven forbid, anything should happen to me, Lauren is not eligible to receive the survivor annuity from my pension nor health insurance survivor benefits to which others would be able to gain access.

Unlike the spouses of my colleagues, Lauren is also not currently subject to any of the obligations related to my Federal service, and I find this disturbing. Think about this. All Members of Congress file annual financial disclosures. Married members must file very important information about their spouses' income, their investments, gifts, and debts, etc. Surely the public interest would require that these obligations apply also to partners of gay and lesbian office holders.

In June, as you referenced, President Obama signed a presidential memorandum on Federal benefits and nondiscrimination which directs OPM and the State Department to extend certain benefits to the same-sex partners of Federal employees within the confines of existing Federal law. Although the memorandum is an important step in providing same-sex partners of Federal employees with benefits already available to the spouses of heterosexual employees, it falls short of providing the full range of benefits.

President Obama recognized and acknowledged that fact when he signed the memorandum, calling it "just a start." And he went on to say, "As Americans, we are all affected when our promises of equality go unfulfilled."

President Obama recognizes that the full extension of benefits will require an act of Congress and proclaimed his strong support for the legislation that you are reviewing today.

Like our President, I strongly believe that we must address the significant inequality in compensation experienced by an estimated 30,000 employees at all levels of the Federal Government who currently cannot provide benefits to their same-sex domestic partners. The purpose of the Domestic Partnership Benefits and Obligations Act is to ensure that hard-working Americans can no longer be denied equal compensation for equal work just because of who they love. There is certainly nothing more American than ensuring that

people have equal job opportunities and are paid fairly for a full day's work.

Chairman Lieberman, Ranking Member Collins, my thanks to you again for inviting me to testify.

Chairman LIEBERMAN. Congresswoman Baldwin, thanks very much for that testimony, which was very strong—strong in terms of the public impact overall, but also to the extent to which you talked about its personal impact, which is very real and to me very compelling.

I do not have any questions. Senator Akaka, do you have any questions for the Congresswoman?

Senator AKAKA. Mr. Chairman, I do have some questions.

Chairman LIEBERMAN. Go right ahead, if you would like.

Senator AKAKA. Mr. Chairman, I would ask that my full statement be inserted in the record.

Chairman LIEBERMAN. That is fine. Actually, if you wanted to wait until afterwards, because she is going to go back, unless you have specific questions for her, I would welcome your opening statement.

Senator AKAKA. Thank you.

Chairman LIEBERMAN. Is that OK? All right.

Ms. Baldwin, maybe we will let you go because I know you have the other meeting. Thanks very much, and obviously we will continue to work together. Our own hope is to mark this bill up as soon as possible within this Committee and send it out to the floor, and then obviously scheduling depends on higher authorities—earthly authorities, but higher. [Laughter.]

Thank you very much. Have a good day. I thank Congresswoman Baldwin.

Senator Akaka, would you like to make your opening statement at this time? We would welcome it. You have worked, obviously, very hard in the overall area of human capital management. You are the chair of the relevant Subcommittee of this Committee, so I would welcome your opening statement.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I would ask that my full statement be placed in the record.¹

Chairman LIEBERMAN. Without objection.

Senator AKAKA. I want to thank you and Ranking Member Collins for holding this hearing. It addresses a very important issue: Providing domestic partnership benefits to Federal employees.

I am proud to be a cosponsor of your bill, Mr. Chairman, S. 1102, the Domestic Partnership Benefits and Obligations Act of 2009. My Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia has been working to improve Federal recruiting and hiring in order to make the Federal Government the employer of choice in the Nation. This simply is not possible if we deny a subset of potential employees important benefits that other employers offer.

A large number of private and public employers, including my home State of Hawaii, already provide domestic partner benefits to

¹The prepared statement of Senator Akaka appears in the Appendix on page 28.

employees. If the Federal Government is to recruit and retain the most talented employees, it must follow the lead of the private sector and offer domestic partner benefits to Federal employees. Simply stated, Mr. Chairman, providing these benefits makes sound business sense.

I am pleased that President Obama showed his commitment to Federal employees by signing a presidential memorandum in June directing the heads of the executive departments and Federal agencies to provide certain benefits to the same-sex partners of Federal employees. As the President acknowledged, however, this was only the first step, and more work needs to be done on the issue.

We must not ask our dedicated Federal employees to sacrifice the needs of their families and loved ones in order to serve their country. As a Nation and as an employer, we must hold ourselves to the highest standards of equality. Providing Federal employees with domestic partner benefits will bring us a significant step closer to the principle of equality under the law.

I look forward to hearing from our witnesses today, and, again, Mr. Chairman, thank you for holding this hearing.

Chairman LIEBERMAN. Thank you very much, Senator Akaka.

We will now go to the Hon. John Berry, Director of the U.S. Office of Personnel Management. It is great to welcome you back. I was thinking, of course, I still associate you with wonderful visits my family and I took to the National Zoo when you were the Director there, happy as I am that you are at OPM. And I do have the impression when I drive up Connecticut Avenue that every now and then I can hear the plaintive cries of some of the animals there about the fact that they miss you. [Laughter.]

You were really a wonderfully spirited, effective, and devoted leader there, as you already have proven yourself to be at OPM. So it is an important issue, and the new Administration I know brings a new perspective to it, so we welcome your testimony at this time.

**TESTIMONY OF HON. JOHN BERRY,¹ DIRECTOR, U.S. OFFICE
OF PERSONNEL MANAGEMENT**

Mr. BERRY. Mr. Chairman, thank you for your leadership over so many years on this important issue, and, Ranking Member Collins and Senator Akaka, thank you all for your support and the energy that you have put behind this very important issue. We would not be here today without the leadership that you have provided year in and year out. So thank you, and hopefully we are closer to the finish line, so we look forward to that.

I appreciate very much the opportunity to testify today, and I will do a short statement in exchange for the more detailed one for the record.

This critical legislation, as has been discussed, would provide health, life, and survivor benefits to the same-sex domestic partners of Federal employees.

I applaud each of you and all of the cosponsors of S. 1102 for introducing this bill in the Senate. Since the 109th Congress, you

¹The prepared statement of Mr. Berry with attachments appears in the Appendix on page 35.

have demonstrated your consistent leadership and your commitment on this issue by continually reintroducing this legislation. I want to thank you and commend you for your efforts to improve the Federal Government's competitiveness in recruiting and retaining our most qualified workers. I also would like to recognize Congresswoman Baldwin's incredible leadership in the House on this issue.

The White House and the Office of Personnel Management wholeheartedly endorse passage of this bill, and I will summarize the reason why in the next 5 minutes. In my written testimony, I have mentioned some technical fixes to the bill that we are seeking, but I guess I would just make the offer to you and to the Committee staff that we will make all of our resources in the office available to help you as you move forward with the legislation.

At my confirmation hearing, I said that two of my primary goals as the Director of OPM would be to make the Federal Government the country's model employer, as Chairman Akaka shares in that effort, and to attract the best and the brightest of our country to Federal service. The passage of S. 1102 is essential to accomplishing both of these goals.

Under current law, the Federal Government cannot offer basic benefits like health insurance, life insurance, and dental and vision insurance to the domestic partners of our gay and lesbian Federal employees. Opposite-sex domestic partners are not eligible for these benefits either, but they may gain eligibility through a valid marriage. Even in those States where same-sex partners can marry, their marriages are not recognized for purposes of Federal benefits because of the Defense of Marriage Act.

The failure to provide these benefits to same-sex domestic partners directly undermines the Federal Government's ability to recruit and retain the Nation's best workers. Historically, the Federal Government has in many ways been a progressive employer. In this case, however, we have fallen behind the private sector and 22 States now, including Connecticut, Maine, and Hawaii, and the District of Columbia. Almost 85 percent of the Fortune 100 already offer similar benefits to their same-sex domestic partner employees. These companies include Dow Chemical—which is with us today—Chevron, Archer Daniels Midland, Perot Systems, Lockheed Martin, and Food Lion. The Federal Government does not effectively compete with these companies for every talented person when we fail to offer comparable job benefits to our employees.

We are also at a disadvantage, as has been discussed, in retaining experienced and highly effective employees—in whom we have invested, I should add, significant resources in their training and their job development—who may decide to find employment elsewhere because of the Federal Government's failure to keep up with the private sector.

The President took an important first step toward addressing these shortfalls in the June memorandum, but he also made clear we need a change in the law to provide these critical benefits to our employees. I would also note that the cost of extending these benefits to same-sex domestic partners is negligible.

Additional premiums for providing life, dental, and vision insurance to same-sex domestic partners will be borne entirely—en-

tirely—by the gay and lesbian employees who enroll their partners in those benefit plans. Adding domestic partner health insurance and survivor benefits for retirees would cost approximately \$56 million. This cost also includes \$19 million in savings in the short term in that, if you opt to provide an annuity for your survivor, you opt for a lower benefit payment in the early years in exchange, just as you do for heterosexual married couples over the long term, and so there is a \$19 million offset savings in the short term that is provided by the fact that there would be lower retirement annuities paid out to our Federal employees if we offer this benefit.

Chairman LIEBERMAN. Excuse me. Am I right that is an annual number?

Mr. BERRY. Yes, sir.

Chairman LIEBERMAN. Good.

Mr. BERRY. The marginal increase, the total cost of the entire implementation of this program equates to about two-tenths of 1 percent of the entire cost of our Federal Government health insurance program. To put this in perspective, we spend \$35 billion a year on the Federal Employee Health Benefits Program (FEHBP) for our Federal employees and retirees. I can assure the Committee that the efficiencies and the program reforms that we intend to put in place that will benefit our Federal employees and retirees will more than offset the cost of this program over the life of this Administration.

Simply put, end to end, extending benefits to same-sex partners is a good, sound business decision. Dow Chemical and the other 60 percent of the Fortune 500 which provide these benefits can testify to that. This legislation is a valuable opportunity for the Federal Government to enhance an essential recruitment and retention tool. Just as important, this bill shows that we recognize the value of every American family and are committed to the ideal of equal treatment under the law that our Founding Fathers envisioned.

Thank you, and I look forward to continuing our work together, and I am available to answer any questions that you might have.

Chairman LIEBERMAN. Thanks very much, Director Berry, and we will have questions.

We are glad to welcome Dr. William Hendrix, who serves as biology team leader for Insect Traits and Seed Treatment at Dow, and also chairs Dow's Gays, Lesbians, and Allies at Dow Chemical Network.

Dr. Hendrix, we are delighted to have you here and would welcome your testimony at this time.

TESTIMONY OF WILLIAM H. HENDRIX, III, PH.D.,¹ GLOBAL LEADER, GAYS, LESBIANS, AND ALLIES AT DOW (GLAD), THE DOW CHEMICAL COMPANY

Mr. HENDRIX. Thank you very much, Chairman Lieberman. We appreciate the opportunity to testify today.

Chairman Lieberman, Ranking Member Collins, Senator Akaka, and other Members of the Committee for Homeland Security and Governmental Affairs, as has already been mentioned, my name is

¹The prepared statement of Mr. Hendrix with attachments appears in the Appendix on page 84.

Dr. Bill Hendrix, and I am the biology team leader at Dow AgroSciences, a wholly owned subsidiary of Dow Chemical Company. I hold a Ph.D. in Entomology from Iowa State University and have worked for Dow almost 20 years.

In addition to that role, I also serve as chair for the company's Gays, Lesbians, and Allies at Dow, or the GLAD Network. It is an affinity group advocating for gay, lesbian, bisexual, and transgender and their allied employees within the company. GLAD is one of the seven employee networks at Dow, all working toward promoting an increasingly diverse and inclusive workplace.

First, I should probably provide a little bit more background on Dow Chemical. Dow was founded 112 years ago in Midland, Michigan, and that is a small town of about 40,000 people, roughly 100 miles north of Detroit, Michigan. Our small-town Midwestern roots have encouraged us to establish our enduring core values of integrity and respect for people. It is these values that form the very heart of our approach to diversity and inclusion.

Over the years, as we have grown and become a major player in the global economy, diversity and inclusion have become key elements of our corporate culture. Just consider our footprint: We serve customers in 160 countries, we have manufacturing facilities in 35 different countries, and at last count, I have 46,000 colleagues who represent 100 different nationalities. And we are all working together to generate \$57.5 billion in annual sales.

Earlier this year, Dow completed its acquisition of Rohm and Haas, a \$10 billion specialty chemicals company, that will further expand our growth potential and our reach into new markets and geographies.

So, clearly, diversity underpins our workforce, our culture, and absolutely our business model. It is a highly competitive world where innovation is the key to securing competitive advantage, and we know that it is our "human element" that is the key to our success. As a result, we know that creating a respectful, inclusive working environment is not only a matter of fairness and equality, but also one of very critical economic and business importance. Likewise, we feel that S. 1102, the Domestic Partnership Benefits and Obligations Act of 2009, will similarly help the U.S. Government create a more respectful and inclusive work environment.

With a shrinking and ever more diverse talent pool—particularly in the sciences and engineering—it is essential for us to actively include everyone to ensure we attract, develop, and advance the very best talent available in the marketplace. As an industrial, business-to-business supplier with almost no consumer marketing, and located largely in smaller rural areas, we must work even harder to create an identifiable employer brand to attract our top talent. We see our proactive stance on diversity and inclusion as a key element of this brand.

Our open policy allows us to hire the best employees, with the greatest range of perspectives. When we discuss domestic partnership policies in the workplace, we do so knowing that this policy does give us an advantage. Because we do not have major offices or facilities in the metropolitan areas in the United States, our employees who would like access to domestic partnership policies

often have more protection and freedoms under the Dow system than under the laws of their State or locality.

Specifically, our Lesbian, Gay, Bisexual, and Transgender (LGBT) policies have been good for our workplace for two main reasons: One, retention of our employees has been enhanced because they know that they can perform their jobs openly and with the full support of their family situation without any fear of repercussions, and, therefore, they have much more reason to be committed to our company in return; and two, better recruitment of allies and younger workers, who often use employee benefits, such as support for domestic partner benefits and flexible work hours, as a litmus test for prospective employers.

For Dow, like most companies, the offering of benefits to LGBT employees has been the result of a multi-stage journey. We first instituted sexual orientation in our employment nondiscrimination policies in 2000. We then added parity for domestic partnerships in 2002. We added protection for gender identity in 2007. And a copy of our policy was entered into the written record.¹ Of special note, I wanted to highlight the fact that is implemented globally for all 160 countries that we do business in.

The offering of domestic partner benefits is certainly not out of the norm, and we have already heard some statistics about that. According to the Human Right Campaign Foundation 2010 Corporate Equality Index, “the majority of Fortune 500 companies provide them, and they remain an overall low-cost, high-return benefit for businesses.” Currently 94 percent of the ranked companies in that survey offer domestic partner benefits to same-sex couples and 70 percent offer them to opposite-sex couples.

Often domestic partner benefits are seen as just a benefit for same-sex couples. But domestic partner benefits do not only attract LGBT employees; many companies report that the implementation of domestic partner benefits help attract and retain critical talent from non-gay and lesbian talent. These particular candidates have reported that the existence of a domestic partner benefits policy shows that the company values and truly believes in a workplace that is respectful and protects their employees. This trend is especially prevalent among younger candidates in the workforce—a segment obviously very critical to our success. And I would say you mentioned statistics of the retirement that is coming in the Federal Government, and we are looking at a very high rate as well, roughly 50 percent within the next 5 years. So it is very critical.

Within Dow, we have instituted policies to create parity between those who are traditionally married and those couples who would like to take advantage of our domestic partner benefits. Therefore, we do offer benefits to both same-sex and opposite-sex couples, and those who qualify also have access to a wide range of benefits, which, on the whole, are very similar to those outlined in S. 1102. Many of these benefits do not require the company to incur any additional costs. As examples, in addition to our U.S. medical plan, prescription drug plan, and our dental plan, employees have access to family leave, insurance, pension, adoption assistance, and inter-

¹The document submitted for the record by Mr. Hendrix appears in the Appendix on page 90.

national relocation benefits. Where a benefit is offered to a traditional spouse, we try to offer that same benefit to a domestic partner. Therefore, partners may take advantage of things like company discounts, visits to the fitness center, access to the flu prevention program, and have ability to open up a checking account at the credit union.

Obviously, on an international scale, local law can impact our offerings within different countries and for international relocation. However, our global policy is to provide parity between domestic partners and those that are traditionally married within the country.

Obviously, our management is sensitive to the very critical issues related to the cost that offering such benefits would add to our company's bottom line. After 7 years of offering domestic partner benefits to both same-sex and opposite-sex couples, I can tell you that the program does not add significantly to the bottom line. Currently, Dow Chemical has 105,653 covered lives under our U.S. Medical Plan with an annual cost of \$325 million. Quite in the ballpark of numbers quoted earlier. This number includes employees, retirees, and dependents of both our employees and retirees. We currently have 282 domestic partners who are covered under Dow's U.S. health benefits. That represents 0.27 percent of our covered lives. Interestingly, the average net payments for domestic partners is slightly less—0.24 percent of our total spending, which is roughly \$2,730 per domestic partner.

A second concern is how you create a registry of qualified domestic partnerships. This does entail a balance between respecting the individual's need for privacy with the company's need to install guidelines, as there are no national or State registries of domestic partnerships in most States, such as marriage licenses. For your use, we have provided to the record a copy of our policy for determining the existence of a qualified domestic partner relationship.¹ Once this form is completed by the employee, the couple is granted access to all of Dow's domestic partner benefits. To date, we have had no issue with fraudulent claims for benefits. In fact, according to Lambda Legal, time has shown that fraud has not been a problem in the domestic partner benefits programs, and it is probably a lesser risk among employees claiming benefits. It is probably less of a risk compared to couples in a traditional marriage situation due to the tax penalty that is incurred with a domestic partner benefit.

Public policy can also augment a company's diversity program. Accordingly, Dow continues to strongly support the Tax Equity for Domestic Partner and Health Plan Beneficiaries Act, or S. 1556. Unfortunately, current law requires an employee whose domestic partner receives health benefits to pay taxes on their employer's contribution for health insurance benefits, and both the employee and employer must pay payroll taxes on this additional taxable income.

Overall, Dow has found it a relatively easy transition to offer domestic partner benefits. This cost has been minimal while the im-

¹The document submitted for the record by Mr. Hendrix appears in the Appendix on page 91.

fact to the daily culture has been immense. Every time an email goes out to employees stating that "spouse/domestic partner," then we send a very positive message for our workplace inclusion and reinforce our "human element" advantage.

Dow appreciates the chance to share our views and applauds the Committee's work to gather more information on domestic partner benefits within the workplace. We strongly support the addition of these policies to all workplace environments and stand ready to assist in any way to review our own policies in this area. We welcome any further questions you might have at this time.

Chairman LIEBERMAN. Thanks very much, Dr. Hendrix. I appreciate your opening statement. We will do 7-minute rounds of questions.

I must say perhaps the obvious, that I think it is really significant that you are from Dow Chemical, and if you look at the list of corporations that have provided benefits, equal benefits to same-sex partners of their employees, it has gone way beyond what might be called the New Age industries, the high-tech information technology companies centered around Silicon Valley or Seattle.

Mr. HENDRIX. Absolutely.

Chairman LIEBERMAN. I do not mean this personally, but Dow is an old business. [Laughter.]

Mr. HENDRIX. And we are quite proud of that, and you are exactly right. It is a very traditional business.

Chairman LIEBERMAN. It is a traditional business, right, obviously with progressive management, but this very traditional business has made this judgment based, presumably again, on what it thinks is fair, but also based on what its business model is. So I think there is significance in that.

Director Berry, at some point, as we consider this in the full Committee or out on the floor of the Senate, I am sure we are going to be pressed to try to estimate the total additional costs of this. I thought the numbers you provided were very helpful, and two-tenths of 1 percent not of Federal employee expenses, but two-tenths of 1 percent of the Federal health benefits alone. I do not need this now, but to the extent as we go on, people will ask about what are the cost implications beyond the health benefits, and if you can help us do that, I am sure we will benefit.

Mr. BERRY. Mr. Chairman, we will definitely get you those numbers for the record.¹ We have that on a 10-year basis, and we can get you all of that. But I think it is important to have some comparison because this is such an important recruitment and retention tool. We spend money on important recruitment efforts. Right now, we are spending \$43 million a year on relocation of employees for the Federal Government. We spend \$85 million in recruitment incentives. We spend \$155 million a year on retention incentives.

So, when you put this in that context, it is in a very small category in terms of what we can do in terms of tools in our tool belt that we can have that can help us with recruitment and retention. This is one of the lowest-cost options you could give us. So, at the same time it is an incredibly powerful tool for its price.

¹The information referenced by Mr. Berry appears in the Appendix on pages 39-83 respectively.

And so when I put it in the context of those other tools that we use, this is a no-brainer for us in terms of a good deal for the Federal taxpayer.

Chairman LIEBERMAN. That is very well said. I notice on the chart that you provided to the Committee, you have a 10-year projection for current employees of \$633 million.² I know it is not even over the 10 years, but if you average it, obviously it comes to about \$63 million, which is—I think those comparisons are excellent. The other money that is being spent for the retention incentives are—well, more than twice that number.

Mr. BERRY. Absolutely, sir.

Chairman LIEBERMAN. Have there been—I quoted one study from UCLA about estimated numbers of Federal employees with same-sex partners who were not working for the Federal Government. Have there been any studies or surveys that tried to quantify, beyond the anecdotal or common sense, the impact that providing these benefits would have on recruitment and retention? Obviously, these would be mostly in the private sector.

Mr. BERRY. There are studies in the private sector, Mr. Chairman, and we can provide those to the staff for the record so that you will have access to those. A lot of good work has been done, and it references what Dr. Hendrix referenced, which is that it is not as if there is a tidal wave of applicants in any company for this benefit.

Chairman LIEBERMAN. Right.

Mr. BERRY. It is an important tool, but in terms of the level of application across the board in companies across the Nation and in States and local governments that have done this they have found that the rate of application is very low. And I think what you have hinted at and Dr. Hendrix hinted at is the more important fact that this isn't just for the LGBT employees. This has become a litmus test for this generation. Kids coming out of school today are looking at companies and places to work, and they have in the back of their minds certain litmus tests that they use to determine, "Is this a place I want to work?"

Chairman LIEBERMAN. Yes.

Mr. BERRY. And young kids today are looking at this as a basic indicator, that if your company does not have this, you are not a cool place to be. This is not just important for the LGBT community. This is important so that we can be competitive in hiring kids out of college and graduate schools today who, if we do not have this, are not seeing us as a cool place to be.

Chairman LIEBERMAN. It is a good point, and it is certainly validated by the differing opinions among different age groups on questions of gay rights generally, including this one.

I think your testimony, Dr. Hendrix, has been very helpful, both in terms of that factor, the impact on recruitment of non-gay and lesbian personnel to work for the Federal Government.

In Connecticut, we have a large employer, one of whose major concerns about the current debate about health care reform is that the employer not be compelled to reduce their benefits to their employees. And the justification is that they believe from a business

¹The chart referenced by Senator Lieberman appears in the Appendix on page 102.

point of view that the provision of benefits for the workers and their families actually pays off in more hours, more days at work, fewer days missed, either because of the illness of the employee or the illness of a family member.

So I do not know whether there is any experience that you have had at Dow or you have any other data reflection on this, but I wonder if, in addition to helping recruitment and retention, whether this provision of health benefits for partners of Federal employees also may be beneficial to what I call "productivity"?

Mr. HENDRIX. I can say that we have not done a firm survey. Again, it is more anecdotal. But we feel that is very true, again, with the increased support of the company that they feel that they are getting in return, it does pay back. And it has been quite strong.

Like you have already said, if the company helps support their infrastructure, then that makes them a lot more able to work and to put more into it. We definitely believe that has been the case.

Chairman LIEBERMAN. You are talking also, I think, if I am getting the drift, about loyalty and morale.

Mr. HENDRIX. Yes.

Chairman LIEBERMAN. In addition to the domestic partner being healthy so a worker can go to work without concern. Part of it is building up loyalty to the company, which hopefully we would do with the Federal employees.

Mr. HENDRIX. Absolutely.

Chairman LIEBERMAN. My time is up. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Berry, in your written testimony, you discussed at more length a memorandum that the President issued in June in which he requested that the Secretary of State and OPM identify benefits that could be extended to the same-sex partners of Federal employees. In addition, the President directed all executive departments and agencies to undertake that review.

In light of that Executive Order or memorandum, could you please explain, in case we get this question, why our legislation is still needed?

Mr. BERRY. That is a great question, Senator Collins. The President made clear in signing that bill—and my General Counsel Elaine Kaplan, who is behind me here today—did a thorough and exhaustive review of Title 5 on this issue as to whether either OPM or the President has the authority to move forward and provide this benefit dealing with health insurance and retirement insurance benefits to our Federal employees. And the conclusion of that study, which was done in consultation with OPM, the Justice Department, White House Counsel, and the State Department's Counsel, was no, neither the Office of Personnel Management nor any Federal agency nor, in point of fact, the President of the United States, can unilaterally extend these benefits to our Federal employees and retirees in the absence of law. That is why this legislation is absolutely critical and essential.

So that has been confirmed now. I know there has been discussion over the years regarding whether this may or may not be possible. The conclusion is it is not. Not even the President has this

authority. It requires the passage of legislation by Congress, and that is why this Act is so important and critical.

Senator COLLINS. Thank you for clarifying that.

Mr. Hendrix, I noted in your testimony that you said that Dow Company offers benefits to both same-sex and opposite-sex couples who are in committed domestic relationships, and this brings up a difficult issue that I am going to turn to Mr. Berry and put him on the spot.

Maine State employees receive employment benefits regardless of whether they are in same-sex or opposite-sex domestic partnerships, just as Dow does.

There are some who would say that the reason our legislation does not do that is that opposite-sex domestic partners can gain eligibility by getting married; whereas, in most States, same-sex partners cannot do so.

On the other hand, if our objective is to increase the recruitment and the retention of qualified, highest-quality employees, should we be drawing a distinction between two committed relationships based solely on the gender of the partner on whether or not it is same sex or opposite sex? Is it fair? If we are talking about fairness, is that a fair distinction for us to make? And I know I am treading on delicate ground here. Mr. Hendrix, let me start with you, and then I will go to Mr. Berry.

Mr. HENDRIX. So it was a discussion, obviously, within Dow Company as we moved forward with it, but, again, if you are trying to recruit the best and the brightest and retain those once you have attracted them, it did not make sense for us to distinguish. So we were looking for parity between non-traditional and traditional relationships. What we were trying to do is establish a committed relationship and how do you move forward with that.

Senator COLLINS. Mr. Berry, what is your view on this issue?

Mr. BERRY. Well, Senator Collins, the Administration view is that right now this bill is correctly drawn in terms of a first step, and that the cost of this first step is one that we can manage and can offset over the course and term of the Administration.

The cost of opening it, as you said, to opposite-sex couples in committed relationships does have a significant financial impact. At this point in time, the Administration feels that impact is of such a size and magnitude that we just cannot afford to make that step at this time.

Right now the Administration is willing to support this for same-sex couples. We would look forward to working with you and the Committee and the Congress in years forward as we identify the costs and cost offsets better, but you clearly have identified a fairness issue, and I think we need to keep open the possibility of exploring how we might be able to move forward with that in the future.

Senator COLLINS. Mr. Hendrix, opponents of our bill raise the issue of fraud, of people trying to get benefits by pretending that they are in domestic partnerships and filling out the forms. That is less likely to be the case, they would argue, if someone is married because it is more easily checked to see whether people are married.

Has this been a problem at your company, to your knowledge?

Mr. HENDRIX. No, it has not been a problem. I put in there rather ambiguously that fraud has not been an issue, but when we were searching, we could not find a case in our search, for the testimony here today. So I am sure it could happen. We have the policy with documentation required to limit that as a consequence. So, we think that we have got a good form in place and a good process that is keeping us from having issues with fraud.

Senator COLLINS. Mr. Berry.

Mr. BERRY. Senator Collins, I think it is a great point. I think what will be a significant difference between the public sector and the private sector on this is that under this legislation, if a Federal employee were to misrepresent this, there are criminal penalties. So this is a pretty serious charge, and we will be obviously enforcing it, just as we do now, through the use of our Inspector General, who regularly audits our benefit programs and checks to make sure that such fraud is not occurring. And so we do not face much fraud on this, and it is an area where we would not expect fraud, but we would clearly be on guard for it.

We would ask our Inspectors General to use our oversight capacity to make sure that was not happening; and if it did, quite frankly, one or two cases would have quite a chilling effect on that fraud in that a criminal penalty would be substantial. And so I do not see this as a big threat or a deterrent to moving forward with this legislation.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Director Berry, it is good to see you again, as always.

Mr. BERRY. Yes, sir.

Senator AKAKA. You testified that this legislation is needed to assist the government in recruiting new employees to the Federal workforce. Clearly, corporations and public employers who do offer domestic partnership benefits have a substantial advantage for recruiting the best and brightest gay and lesbian employees.

Additionally, many young people today want to work in an inclusive and diverse environment. As you have suggested, these potential employees, regardless of sexual orientation, may prefer an employer that makes its commitment to inclusiveness clear in its personnel policies.

Can you discuss whether there may be broader recruiting advantages that domestic partnership benefits might provide?

Mr. BERRY. Thank you, Senator. Mr. Chairman, it is always such a pleasure to be with you and Senator Voinovich on your Subcommittee and talking about so many issues which we all care deeply and passionately about.

You will recall from my confirmation hearing that when the President called and asked me to do this job, he said, "John, we have got to make government service cool again." And I laughed, and I said, "Well, Mr. President, I just turned 50, so by definition, 20-year-olds are going to do the opposite of what I say, and that will be closer to cool."

But in this case, this really has become a litmus test for this generation. I know because I have been out talking with college students in our recruitment and job fairs. Quite frankly, this comes

up as a regular question: "Why doesn't the Federal Government do this?" And I am at a real disadvantage in responding.

It is a competitive world out there with the private sector and with State and local governments. As you know from the Committee, we have between 10 and 20 positions for which we issue direct-hire authority to agencies so that they do not even have to follow the competitive process, because we have been unsuccessful in recruiting enough applicants for those jobs that we need to fill.

A good example of that is veterinarians at the Food and Drug Administration. We cannot hire them right now. And so in guaranteeing the food safety of the Nation, we are having a hard time hiring people because we cannot effectively compete with Dow and other companies who snatch those people up before we do.

That is a growing problem. Even with the economy, as dark as it has been, we are still facing these problems with veterinarians, engineers, doctors, nurses for our Department of Veterans Affairs (VA) hospitals. We are not competitive. Proof of that is that I issue direct-hire authority to agencies so they do not even have to advertise or compete for the job. In other words, if the VA finds a nurse and they are walking and breathing, they can hire them on the spot. They do not have to go through the paperwork. Well, that is proof that we are having trouble competing and that we are not effectively recruiting among those populations.

Will this solve that problem? No, it is not a silver bullet that will solve everything. But it is one more tool in our tool belt that can help us, as people might be thinking about whether this employer is progressive or not. They may not be an LGBT person. They may not have a domestic partner of the same sex. They are looking at it as: Is the Federal Government a progressive employer? And right now you would have to conclude, if that was their test, no. They would look for people here who, quite frankly, would also pay them more. And so we are losing good people.

So this is a good tool. It would be a great tool for us to have. It is not an expensive tool to have, and I think it will be very helpful, sir.

Senator AKAKA. Thank you very much, Director Berry, for your positive response.

Dr. Hendrix, you talked a bit about that issue in your testimony. I would like to hear more about how Dow Chemical Company's domestic partnership benefits program has affected its ability to recruit individuals who are not gay or lesbian?

Mr. HENDRIX. Yes, I am quite happy to do that—although you have done a very good job of summarizing it, Mr. Berry.

It is a litmus test. It is a very different situation when you are interviewing 20-year-olds right out of college, and this is one of the checks that they look for, for a company that they might want to be a part of. It gets back to, "Is the company going to look out for us as a whole, me as a whole? So it may not be something I particularly want to take advantage of, but I know that it is something that as a whole, it is a great benefit to have."

The other issue was flexible work hours that we mentioned. It is a policy we have had for several years as well. These are the types of things that younger recruits are now looking at.

We also have good examples where we had lost employees, so this is another reason. It is a lot more expensive to retain a good employee than it is to attract a new one, and so when you see one or two people leaving and that is the reason—and Representative Baldwin also pointed that out—that opens up a lot of eyes.

So it is definitely there. We do feel it offers us the competitive advantage.

Senator AKAKA. Let me ask this question of Director Berry. As Senator Collins mentioned, in July, at the President's request, you issued a memorandum directing agencies to review the benefits they offer to employees and determine which of those benefits could be extended to same-sex domestic partners without legislation. You instructed the agencies to report back by September 15, 2009. Please comment on the information OPM received and any recommendations you made to the President, if you can, based on this information.

Mr. BERRY. Thank you, Mr. Chairman. The good news that I am here to report is that the agencies have all responded to that request. Our staff is now going through those responses and preparing a report that will go to the President. We have not completed that review of the agency response yet, but that is underway.

The good news is that everyone did respond. We are wading through that information right now and looking at what might be able to be done administratively and what might also require additional legislation. We will be sure to report back to you and the Chairman and the Ranking Member as to the results of that as soon as that work is completed. It is underway right now.

Senator AKAKA. Thank you very much for your responses. They are helpful. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Akaka.

Thanks, Director Berry and Dr. Hendrix. I think your testimony, Congresswoman Baldwin's, and the exchanges we have had have really been very constructive and very informational. I think people will continue to come back to the estimate of the cost and all the benefits that come from those incremental costs and the comparison to the other expenditures that the Federal Government makes to recruit, retain, and increase productivity. And I think the fraud question will come up also, but you have handled it very well.

So it is our intention to mark this bill up at our Committee markup in either November or December, to get it out to the floor of the Senate by the end of the year, and hope that we can then take it up sometime early in the next year, which would be a step forward, and hopefully be in time for you to put it to work. I thank you for your testimony.

Senator Collins, would you like to say anything in conclusion?

Senator COLLINS. Thank you. I just want to echo your comments by thanking our witnesses today.

Chairman LIEBERMAN. Thanks very much. Yes, Mr. Berry?

Mr. BERRY. Mr. Chairman, just in the interest of full disclosure, since Congresswoman Baldwin did it as well, I also would personally stand to benefit from this legislation, so I would like to just disclose that to the Committee in that my partner does not work for a company that provides this benefit and so would be likely to

take this benefit if it were offered by the Federal Government. And so I also would just like to disclose that for the record.

The other thing I would like to mention, Mr. Chairman, if I could before you close, is that if it is of assistance to you and the Ranking Member, I think now that working together we will be able to identify efficiencies to fully offset the cost of this legislation over the term of the Administration. And so if you need a commitment or a promise to that effect, I am happy to deliver that, that we will work with both parties to find efficiencies and improvements that we can both agree on that will not damage Federal employees, not restrict benefits in any other way, but fully cover the cost of this program.

Chairman LIEBERMAN. That is a very constructive suggestion because, otherwise, we would have to fund it incrementally in the next fiscal year beginning October 1st of next year, assuming we can get it passed next year, which I hope and believe we can. But all the better if we can say it is deficit neutral because you have identified some savings. I appreciate that.

Dr. Hendrix, do you want to say anything in conclusion?

Mr. HENDRIX. Well, I guess I should go for full disclosure, too, and tell you that my partner of 28 years takes advantage of the Dow benefits. [Laughter.]

And it is of great peace of mind to us, and I hope one day that the U.S. Government will also be able to do that. So thank you.

Chairman LIEBERMAN. I appreciate your saying that.

I do not believe that there is any need for you to recuse yourself from this, Mr. Berry, as a result— [Laughter.]

No, I guess it also says that we are lucky to have attracted you to public service, notwithstanding that inequitable burden that you have been dealing with, and your partner has. But the record of the hearing will stay open for 15 days, as is our custom, for additional statements or questions. I thank all of you very much, and with that, the hearing will stand adjourned.

[Whereupon, at 11:16 a.m., the Committee was adjourned.]

A P P E N D I X

**Statement of
Senator Joseph I. Lieberman**

**Domestic Partner Benefits: Fair Policy and Good Business
For the Federal Government
October 15, 2009**

Today, our Committee will take testimony on S. 1102, the Domestic Partnership Benefits and Obligations Act, which Senator Collins and I introduced last year and earlier this year to bring equity to federal workers and strengthen the workforce that serves the American people.

We are holding this hearing as part of the Committee's responsibility under Senate rules for the civil service of our federal government.

Although we conducted a hearing on this legislation during the last Congress, we felt it would be useful to revisit the matter this year particularly to give the Obama Administration an opportunity to express its views on S. 1102. In that regard, we are pleased to welcome the Director of the Office of Personnel Management, John Berry. We will also hear from William Hendrix of Dow Chemical, which is typical of Fortune 500 companies in that it provides benefits to same-sex partners of its employees. And our first witness is our House colleague, Representative Tammy Baldwin, of Wisconsin, who is championing a companion bill to S.1102 in the House.

Senator Collins and I introduced this bill because we believe it is the fair and right thing to do, and also because it makes practical sense for the federal government as an employer. As we approach a generational change in the federal workforce that will see the retirement of approximately one-third of all federal employees, it seems to us to be just plan sensible to do all we can to attract and retain the "best and the brightest" to serve in the years ahead. This legislation would help accomplish that.

Our bill would provide that same sex partners of federal employees equal access to their partners' employee benefit programs. They would be eligible to receive health benefits, long-term care, Family and Medical Leave, federal retirement benefits, and any other benefits for which the spouses of traditionally married employees are eligible. Federal employees and their domestic partners would also be subject to the same legal responsibilities that apply to married employees and their spouses, such as anti-nepotism provisions, financial disclosure requirements, and conflict-of-interest rules.

The Williams Institute, at the University of California, Los Angeles, estimated that, as of 2007, over 34,000 federal workers live in committed relationships with same-sex partners, and that, of them, over 30,000 have partners who are not federal employees. These federal employees have therefore been forced to choose between their commitment to public service and their commitment to their families because they receive fewer protections for their families – and essentially less compensation – than federal employees who are in traditional, opposite-sex marriages or than they themselves could receive from private employers.

An estimated 18.4 percent of all employees' compensation comes in the form of benefits, including benefits for family members. Employees who aren't afforded equal benefits for their families are, essentially, not paid as much as those who are. Many people believe that government should run more like a business, with more efficiencies, more focus on results, and more attention paid to the bottom line. While government and business have different purposes and goals, I do think government has much to learn from private sector business models, including in the matter of benefits for domestic partners.

The fact is that today, almost 10,000 private-sector companies of all sizes provide benefits to domestic partners and more than half – 59 percent - of all Fortune 500 companies do so. Among them are Disney, General Electric, IBM, the Chubb Corporation, Lockheed Martin, Duke Energy, and Dow Chemical, which is represented at our witness table today. I presume these companies provide domestic partner benefits not just because it is the right thing to do but because they have determined that such good employee management practices make good business sense.

The public sector is catching up. Currently, the governments of 22 states, including my home State of Connecticut, and about 154 local jurisdictions provide domestic partner benefits, as do over 300 colleges and universities.

In June of this year, President Obama announced that his Administration would extend certain identified benefits to eligible same-sex domestic partners of federal employees, to the extent possible by executive action under existing law. The State Department promptly extended certain key benefits to same-sex partners of employees serving overseas, such as use of medical facilities and inclusion in emergency evacuation. OPM has also proposed that sick leave and long term care insurance benefits can be extended administratively. But, federal legislation is really necessary to provide to federal employees and their same-sex partners the benefits that are available to married employees and their opposite-sex spouses and that provide the bedrock of any modern employee-benefit program – including health insurance, retirement annuities, workers' compensation, disability and death coverage.

Will this add to the total cost of providing federal employee benefits? Yes. How much? That is what we're looking forward to hearing from Mr. Berry, but I believe it is a relatively small percentage well worth the benefits the federal government will reap.

The Domestic Partners Benefits and Obligations Act will balance the scales of justice, but it will also help the federal government be the best it can be. S.1102 makes good economic sense, it is sound personnel policy, and it is the right thing to do.

Senator Collins?

HOW MANY FORTUNE-RANKED COMPANIES PROVIDE DOMESTIC PARTNERSHIP BENEFITS

	Fortune 20	Fortune 100	Fortune 500	Fortune 1000	AmLaw 200
2009 Interim	17 (85%)	83 (83%)	293 (59%)	404 (40%)	153 (77%)
2008 Total	17 (85%)	83 (83%)	286 (57%)	390 (39%)	149 (75%)
2003 Total		64 (64%)	200 (40%)	-	-

(Source: Human Rights Campaign, Sept. 21, 2009, based on Fortune-ranked companies and American Lawyer-ranked law firms, at <http://www.hrcbackstory.org/2009/09/how-fortune-ranked-companies-stack-up-on-lgbt-workplace-policies>)

Statement of
Senator Susan M. Collins

“Domestic Partner Benefits for Federal Employees: Fair Policy and Good Business”

Committee on Homeland Security and Governmental Affairs
October 15, 2009

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Thank you, Mr. Chairman. I appreciate your leadership on this important issue. I am pleased that Representative Baldwin is able to join us today. Her advocacy on this topic is well known.

The title of this hearing is: “Domestic Partner Benefits for Federal Employees: Fair Policy and Good Business.” It aptly describes why we have introduced this bill to extend employment benefits to domestic partners of federal employees. It is both fair policy and good business practice.

When it comes to employment, the federal government must compete with the private sector in attracting the most qualified, skilled, and dedicated employees. Today, health, medical, and other benefits are a major component of any competitive employment package.

As the Chairman has explained, the Domestic Partnership Benefits and Obligations Act, which we have introduced, would give a federal employee and his or her domestic partner the same benefits available to married federal employees.

The federal government already faces a two-pronged challenge in attracting and retaining talented and dedicated employees.

The first challenge comes from private sector employers, who are increasingly offering these kinds of benefits as standard fare. Among Fortune 500 companies, domestic partner benefits are becoming commonplace. According to the Office of Personnel Management, nearly 60 percent of Fortune 500 companies, including some of our top federal contractors, extend employment benefits to domestic partners.

The second challenge comes from the potential wave of federal employee retirements in the next few years. Approximately 60 percent of the federal workforce will be eligible for retirement over the next decade. If

the federal government fails to attract or retain employees because of a lack of competitive benefits, then the impact of these retirements will be magnified.

As we learned at our hearing on this bill during the last Congress, the private sector offers domestic partner benefits as part of its strategy for building a stronger workforce. These benefits help foster a sense of loyalty between the employees and the organization, creating a more stable and productive work environment.

Many state and local governments also have extended employee benefits to domestic partners in committed relationships. For example, Maine's state government offers benefits to its employees who are in committed domestic partnerships.

If the federal government is to compete with the private sector for the most talented members of our workforce, and if our goal is to create a loyal, dynamic federal workforce for the future, then we need to be able to offer competitive benefits.

I look forward to hearing OPM's views on how this legislation will help draw talented applicants to serve in the government and help retain them.

Again, I thank you, Mr. Chairman, for having this hearing today. Our legislation will help promote a strong federal workforce. It will also serve as an important measure of fairness and equality for our dedicated employees.

STATEMENT OF SENATOR DANIEL K. AKAKA***DOMESTIC PARTNER BENEFITS:
FAIR POLICY AND GOOD BUSINESS FOR THE FEDERAL GOVERNMENT*****Senate Committee on Homeland Security and Governmental Affairs**

Mr. Chairman, I want to thank you for holding this important hearing on domestic partnership benefits for Federal employees. As you know, I am proud to be a cosponsor of your bill, S. 1102, the Domestic Partnership Benefits and Obligations Act of 2009.

As Chairman of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I have worked hard over the years to make the Federal Government the employer of choice in this country. We need to streamline the Federal hiring process and improve recruiting, in order to attract the most talented individuals to the Federal Government, regardless of their sex, race, ethnicity, religion, age, disability, or sexual orientation. During my time in the United States Senate, I, along with my colleagues, have focused on providing Federal agencies with the tools and resources necessary to compete for talent and retain a highly-skilled workforce. That is why I believe this legislation is crucial.

The Federal Government has a unique opportunity to recruit and retain a new generation of Federal civil servants. The Obama administration has sparked interest in government service among students and recent college graduates across the country. With the economy not yet fully recovered, many of this nation's young people are looking to the government for long-term employment. However, it is clear that this next generation of Federal employees values an employer that treats all employees equally. Young people want to work for an employer that offers domestic partner benefits.

Currently, 19 states offer some form of domestic partner benefits. Moreover, nearly 60 percent of Fortune 500 companies – including Dow Chemical, American Airlines, and Lockheed Martin – offer domestic partner benefits to their employees. We must ensure that the Federal Government has the tools it needs to compete with the private sector and attract the best and the brightest to serve our country. Simply stated, providing domestic partner benefits to Federal employees makes sound business sense.

I am pleased that President Obama recently demonstrated his commitment to Federal employees by signing a Presidential Memorandum on June 17, 2009, which directed the heads of Executive Departments and Federal agencies to provide certain benefits to the same-sex partners of Federal employees. As President Obama stated, this action was “long overdue” and paves the way for progress in our nation's pursuit of equality. However, the President also acknowledged that this action was “only one step.”

I am also pleased that the Office of Special Counsel recently updated its website to reflect that discrimination based on sexual orientation is a prohibited personnel practice and is subject to investigation by OSC. During the past Administration, Federal employees were provided inaccurate and inconsistent guidance on this very important issue. I am hopeful that a new Special Counsel will soon be in place to make sure that this protection is rigorously enforced.

Federal agencies already make significant investments in their workforce. Through employee and supervisor training, professional development, and student loan repayment programs, the Federal Government is committing significant financial resources and time to the current workforce. If Federal employees leave for more competitive benefit packages elsewhere, this investment will be lost.

Our dedicated Federal employees cannot be asked to sacrifice the needs of their families and loved ones in order to serve to their country. As a nation and an employer, we must hold ourselves to the highest standards of equality. Providing Federal employees with domestic partner benefits will bring us a significant step closer to the principle of equality under the law.

I look forward to hearing from our witnesses today. Thank you again, Mr. Chairman.

**Post-Hearing Statement for the Record
Submitted by Senator Roland W. Burris**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal
Government”
October 15, 2009**

I am here today to support Chairman Lieberman and Ranking Member Collins in their ongoing efforts to provide same-sex domestic partners of federal employees access to similar benefits currently provided to heterosexual couples. As an advocate for equal rights both inside and outside of the workplace, I believe that the federal government must extend health care, life insurance, and other related benefits to all federal employees and their chosen partners.

The Domestic Partnership Benefits and Obligations Act, of which I am a cosponsor, aims to do just that. Although S. 1102 will bring the federal government in line with major corporations that already offer domestic partnership benefits, this legislation is not solely about turning the federal government into a model equal opportunity employer. Rather, S. 1102 will allow the federal government to compete with educational institutions, Fortune 500 companies, and state and local governments for qualified employees.

This committee has held numerous hearings exploring the hardships the federal government faces in recruiting and retaining talented employees. Offering domestic partner benefits to federal employees will aid in our efforts to secure a talented, productive workforce. After all, offering domestic partner benefits to federal employees will have a positive effect on an individual's financial and emotional well-being, as well as on the institution they are representing.

I am committed to working with Chairman Lieberman and Ranking Member Collins in finalizing S. 1102 and look forward to the witnesses' input on how we can make this bill even stronger and more effective.

STATEMENT OF SEN. PAUL G. KIRK, JR.
**Hearing of the Special Committee on Aging and the Committee on Homeland Security and
 Government Affairs**
 Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government
Thursday, October 15, 2009

I commend Chairman Lieberman for holding this hearing today and for his sponsorship of the Domestic Partner Benefits and Obligations Act. I'm honored to be a cosponsor of this bill to achieve greater parity in domestic partner benefits between the federal workforce and private sector employees. It also requires same-sex couples to meet the same financial disclosure and anti-nepotism obligations required of other couples.

I'm also proud to say that Massachusetts has been at the leading edge of guaranteeing equal rights to same-sex couples. The landmark decision in 2003 by the Supreme Judicial Court of Massachusetts legalized gay marriage in our state, and the opening words of the opinion by Chief Justice Margaret Marshall on rights and responsibilities are especially relevant to today's hearing. As she stated:

Marriage is a vital social institution. The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations.

Many companies in the private sector already recognize the value of extending employment benefits to same-sex couples. In fact, more than half of Fortune 500 companies do so. Obviously, competition is intense for top-flight employees, and restrictions that deny such benefits to same-sex couples can significantly reduce a company's talent pool.

The question today is how quickly we in Congress can move to end the growing imbalance between these benefits in the private sector and the limitations that federal employers face in attracting skilled workers.

President Obama made the right decision earlier this year when he directed federal agencies to extend benefits to same-sex couples to the extent allowed by law. Now, it's up to Congress to see that Chairman Lieberman's bill moves quickly, so that genuine parity can be achieved.

I also believe now is a good time to end the myth floated by opponents of same-sex marriage before the Massachusetts court decision. Their claim that same-sex marriage would undermine so-called "traditional" marriage was patently false. In reality, no such danger existed. Today, six years later, the institution of marriage has actually grown in strength because same-sex couples are being permitted to join this "vital social institution" called marriage.

Granting domestic partner benefits will be another significant victory in the battle for equality for all Americans. Again, I commend the Chairman for his leadership, and I'm hopeful we'll approve his legislation without delay.

**Congresswoman Tammy Baldwin
Statement for Senate Committee on
Homeland Security and Government Affairs
Hearing on S. 1102, the Domestic Partnership Benefits
and Obligations Act
Thursday, October 15, 2009**

Thank you Chairman Lieberman, Ranking Member Collins, and members of the Committee for allowing me the opportunity to testify today at this historic hearing.

I am very pleased that the Domestic Partnership Benefits and Obligations Act (S. 1102) is the subject of our hearing this morning. Chairman Lieberman and Ranking Member Collins, I'd like to extend my sincerest thanks to both of you for your leadership on this bill. I want to thank OPM Director John Berry for taking the time to testify in support of this legislation. I also wish to thank Dr. William Hendrix from Dow Chemical Company for his strong leadership on the issue.

As my colleagues on this Committee know, the federal government employs more than 1.8 million civilian employees, making it the nation's largest employer. Historically, the federal government was a leader in offering important benefits to its employees. But today we are lagging behind. This is particularly true regarding the extension of benefits to employees with same-sex partners. As it stands, some federal employees do not receive equal compensation and benefits for their equal contributions. And the federal government is not keeping pace with leading private-sector employers in recruiting and retaining top talent.

Indeed, a large number of America's major corporations, as well as state and local governments and educational institutions, have extended employee benefit programs to cover their employees' committed domestic partners. For example, over half of Fortune 500 companies now offer health benefits to employees' domestic partners, up from just 25 percent in 2000. Overall, more than 8,000 private-sector companies make such benefits available to employees' domestic partners, as do several hundred state and local governments and colleges and universities. These employers include top American corporations such as GE, Chevron, Boeing, Texas Instruments, Lockheed Martin, and Dow Chemical Company, whom you'll hear from later this morning.

Under the Domestic Partnership Benefits and Obligations Act, a federal employee and his or her same-sex domestic partner, who are not related by blood and are living together in a committed intimate relationship, would be eligible to participate in federal retirement benefits, life insurance, health benefits, workers' compensation, and Family and Medical Leave benefits to the same extent as married employees and their spouses. These employees and their domestic partners would likewise be subject to and would assume the same obligations as are applied to married employees and their spouses, such as anti-nepotism rules and financial disclosure requirements.

I want to make very clear that the bill has strong anti-fraud provisions, requiring employees to file an affidavit of eligibility in order to extend benefits to their domestic partner (and this is significant, especially considering that we do not require married employees to show any documentary evidence of their marriages when claiming spousal benefits). The penalties for fraudulent claims for domestic partners would be the same as the current penalties for fraudulent claims of marriage. For example, intentional false statements on the Federal Employee Health Benefits form is punishable by a fine of up to \$10,000 or imprisonment up to 5 years – and the same would apply under this legislation.

Mr. Chairman, I appear before you today both as the lead author of this legislation, but also as a lesbian federal employee who has been in a committed relationship with my partner, Lauren, for over 13 years.

Over the years, Lauren and I have examined the differences between my benefits and my ability to provide for her compared to the benefits enjoyed by my straight, married colleagues in Congress.

Some quick number crunching would demonstrate that the difference between my health benefits and yours, with regard to that benefit alone over the course of my ten years in Congress is measured in five figures. Although the federal government offers its employees and their dependents more than 300 health insurance plans and subsidizes health insurance premiums, I am not eligible to cover Lauren under any plan like my straight married colleagues can. This is a significant inequality.

Although I can designate Lauren as a beneficiary for my life insurance, Thrift Savings Plan (TSP), and any unpaid compensation in the event of my death, if for some reason I hadn't completed this paperwork, the "order of precedence" would prevent Lauren from receiving my savings. And heaven forbid if anything happens to me, Lauren is not eligible to receive the survivor annuity from my pension, nor health insurance survivor benefits.

Unlike the spouses of my colleagues, Lauren is also not currently subject to any of the obligations related to my federal service. I find this disturbing. All Members of Congress file annual financial disclosures. Married Members must file important information about their spouses' income, investments, debts, gifts, etc. Surely, the public interest requires that these obligations apply also to partners of gay and lesbian office holders.

In June, President Obama signed a Presidential Memorandum on Federal Benefits and Non-Discrimination, which directs the Office of Personnel Management (OPM) and the State Department to extend certain benefits to the same-sex partners of federal employees within the confines of existing federal law. Although the Memorandum is an important step in providing same-sex partners of federal employees with the benefits already available to spouses of heterosexual employees, it falls short of providing the full range of benefits. President Obama recognized and acknowledged that fact when he signed the

Memorandum, calling it “just a start.” He went on to say that, “As Americans, we are all affected when our promises of equality go unfulfilled.” President Obama recognizes that the full extension of benefits will require an Act of Congress and proclaimed his strong support for the legislation that you are reviewing today.

Like our President, I strongly believe that we must address the significant inequality in compensation experienced by an estimated 30,000 employees at all levels of the federal government who currently cannot provide benefits to their same-sex domestic partners. The purpose of the Domestic Partnership Benefits and Obligations Act is to ensure that hard-working Americans can no longer be denied equal compensation for equal work just because of who they love. There is certainly nothing more American than ensuring that people have equal job opportunities and are paid fairly for a day’s work.

Chairman Lieberman and Ranking Member Collins, my thanks again to you for inviting me to testify.

STATEMENT OF

JOHN BERRY
DIRECTOR
U. S. OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

on

S. 1102, DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS ACT OF 2009

OCTOBER 15, 2009

Chairman Lieberman, Ranking Member Collins, and Members of the Committee:
Thank you for affording me the opportunity to testify today on behalf of President Obama and the Administration in support of S. 1102, which would provide health, life, and survivor benefits to the same-sex domestic partners of Federal employees.

I first want to applaud you Mr. Chairman, and you, Senator Collins, and all of the cosponsors of S. 1102 for introducing this bill in the Senate. You have demonstrated your consistent leadership on this issue by reintroducing this bill in the 109th, 110th, and 111th Congresses. I want to thank you and commend you for your efforts to improve the Federal Government's competitiveness in recruiting and retaining the most qualified workers. The White House and the Office of Personnel Management (OPM) wholeheartedly endorse passage of this bill. In my remarks today, I will briefly describe the basis for our endorsement of the bill and offer a few technical suggestions regarding the language of the legislation.

At my confirmation hearing, I said that two of my primary goals as the Director of OPM would be to make the Federal Government the country's model employer and to attract the best and the brightest Americans to Federal service. The passage of S. 1102 is essential to the accomplishment of both of these goals.

Under current law, the Federal Government cannot offer basic benefits like health insurance, life insurance, and dental and vision insurance to the domestic partners of our gay and lesbian Federal employees. Opposite-sex domestic partners are not eligible for these benefits either, but they may gain eligibility through a valid marriage. Except in a few States, same-sex partners do not have that option. And even where they do, their marriages are not recognized for purposes of Federal benefits because of Public Law 104-199, the Defense of Marriage Act (DOMA). In the interest of full disclosure, I personally

stand to benefit from this legislation, as my partner of 13 years will be eligible to enjoy the benefits of this legislation, if enacted.

The current policy is unjust and it directly undermines the Federal Government's ability to recruit and retain the Nation's best workers. Historically, the Federal Government has in many ways been a progressive employer, but we are behind the private sector and 22 States, including Connecticut and Maine, and the District of Columbia. Almost 85 percent of Fortune 100 companies already offer similar benefits to the same-sex domestic partners of their employees. These companies include Dow Chemical, Chevron, Archer Daniels Midland, Perot Systems, and Lockheed Martin. The Federal Government does not effectively compete with these companies for every talented person when we fail to offer comparable job benefits to our employees.

The President took an important first step toward addressing these shortfalls when he signed a memorandum in June directing Federal agencies to extend benefits to same-sex domestic partners of Federal employees to the extent permitted by existing law. As the President noted when he issued that memorandum, however, statutory changes are necessary before the Government can offer its gay and lesbian employees some of the most important benefits, including health and life insurance. Enacting this bill would address the problem and provide for true equality in benefits for all Federal employees. The President strongly supports its passage.

As you know, Mr. Chairman, S. 1102 would provide benefits for same-sex domestic partners of Federal employees. They would be eligible for coverage under title 5 insurance-benefit programs, retirement and disability benefits, the Family and Medical Leave Act, and the Federal Employees' Compensation Act, among others. I suspect that the Committee is interested in knowing how much it will cost the Federal Government to provide these benefits. The cost of extending these benefits to same-sex domestic partners is negligible.

Any additional premiums for providing life, dental, and vision insurance to same-sex domestic partners will be borne entirely by the gay and lesbian employees who enroll their partners in those benefit plans. To add domestic-partner health insurance and survivor benefits for both Federal workers and retirees would cost approximately \$56 million in 2010. This marginal increased cost – which equates to about 2-tenths of a percent of the entire cost to the Federal Government of Federal employee health insurance – would be funded by the additional Government contribution payments for self and family health insurance plans. Our estimated cost of \$56 million in 2010 includes \$19 million in savings because retirees who elect survivor benefits for their domestic partners will experience a reduction in their annuity payments. In addition, as drafted, the bill does not address the tax treatment of the resulting benefits. Under current law, employer-provided health insurance to a non-spouse, non-dependent such as a domestic partner is taxable income to the employee. There may also be tax issues with respect to providing other benefits to non-spouse/non-dependents of employees. The bill should clarify the tax treatment of the benefits. The Administration also notes that this legislation may have implications for other benefits programs, for example Social

Security, across government. The intent of Congress regarding these other benefit programs needs to be clarified.

Simply put, extending benefits to same-sex partners would be a good business decision. Dow Chemical and the other 85 percent of the Fortune 100 companies who provide these benefits can testify to that. Therefore, I am pleased to provide my full support to passage of S. 1102.

Technical Comments

After reviewing the legislative language of S. 1102, we have some technical comments. I want to describe for you a few examples of technical concerns that, I believe, illustrate the need to revise the bill's structure to ensure that it meshes with the laws governing the particular benefits programs that would be affected. Revising the bill to address these concerns would eliminate ambiguity regarding some of its effects and would greatly facilitate effective implementation.

One of our technical concerns is that the bill provides for coverage of domestic partners of Federal employees, but does not include current Federal annuitants. That means the current language of the bill would exclude annuitants with same-sex partners from electing benefits coverage. In addition, a strict interpretation of the bill would raise questions as to whether benefits would continue to be available to same-sex partners once employees retire.

Second, this would require that affidavits pertaining to the eligibility of domestic partners for Federal benefits be filed with OPM. We do not think it is practicable for OPM to play this role. Each Federal agency carries out human resources management functions, including benefits enrollment and payroll deductions, for its own employees. Requiring affidavits to be filed with OPM would be at odds with current provisions of law and regulation governing Federal employee benefits, which recognize that OPM is not a central clearinghouse for all Federal employees.

Third, the legislation needs to take into account that differences in the administration of benefits between a domestic partnership, certified with an affidavit, and a State-sanctioned marriage may occur. The bill provides that, if a domestic partnership dissolves except by death, the former domestic partner will have the same rights and obligations as a former spouse. By law, a former spouse is eligible to enroll in the Federal Employees Health Benefits (FEHB) Program if he or she meets certain eligibility criteria. The former spouse must be entitled to a portion of an annuity and must not have remarried before the age of 55.

Under S. 1102, there is no language allowing us to enforce a similar obligation for the former domestic partner under the same circumstances. Entitlements and obligations for former spouses under the involuntary division of property are attributed to court orders with respect to divorce, annulment, and legal separation. In the absence of domestic

relations law for domestic partnerships in many States, we believe that we would need more prescriptive language in the bill to avoid potential legal hurdles that could occur. In order to fully address these and other technical issues, we strongly encourage you to amend the applicable provisions of the United States Code. This would provide continuity and would resolve ambiguities highlighted by the examples I have provided. It would also preserve the accuracy of title 5 for those who administer its provisions in the future.

We would be pleased to work with the Committee to resolve these technical concerns and offer you our technical assistance to ensure the legislative intent of this bill is embedded in title 5.

Finally, I also recommend the bill be revised to cover commissioned corps officers of the Public Health Service and National Oceanic and Atmospheric Administration.

Conclusion

Again, we welcome the introduction of this bill and strongly support its passage. By your efforts, you have provided a valuable opportunity for the Federal Government to not only enhance the benefits it can offer as a recruitment and retention tool, but, most importantly, to prove that we recognize the value of every American family and are committed to the ideal of equal treatment under the law that our Founders envisioned.

Thank you. I look forward to continuing our work together, and I will be glad to answer any questions.



**POLICY
MATTERS**

Domestic Partnership Benefits: Equity, Fairness, and Competitive Advantage

By Alene Russell
State Policy Scholar, AASCU

As the American public becomes increasingly supportive of equity and fairness in the workplace, employers are discovering that domestic partner benefits programs make good business sense. Evolving social and economic pressures in support of these programs are contributing to their increased use as a competitive lever to attract a diverse, top-caliber workforce.

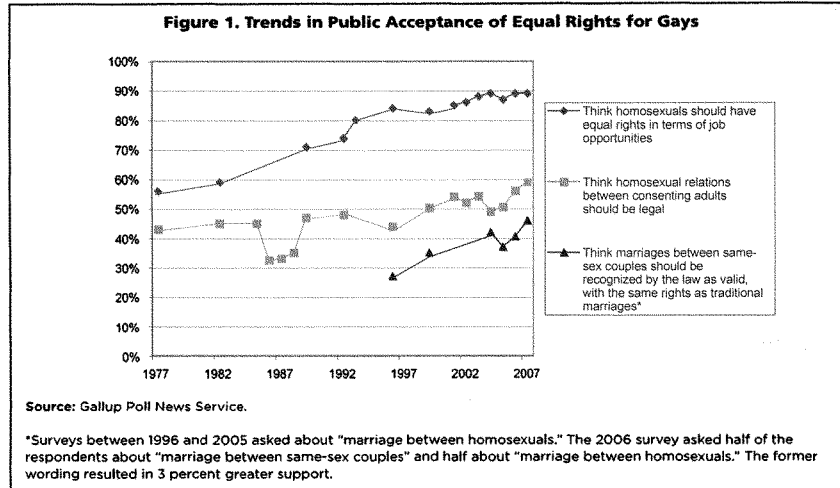
Context

When the *Village Voice* newspaper in New York City first offered benefits to non-married domestic partners of its employees in 1982, this represented a radical departure from tradition. Twenty-five years later, some 9,300 employers in the United States, including many of the nation's largest and most successful companies, have extended their benefits programs to the domestic partners of employees and their dependents. Though such benefits are far from universally available, it is clear that a shift has taken place in American society, moving domestic partner benefits programs from the margins to the mainstream.

This development is consistent with growing public opposition to discrimination on the basis of sexual orientation. It represents a new middle ground in society's culture wars. At one extreme, there are those who wish to preserve the traditional definition of marriage as between one man and one woman

and to deny recognition of any legal status for same-sex couples. At the other extreme, there are those fighting for full marriage equality for same-sex couples. Between them, there is a very large group of individuals who support legal recognition through civil unions or domestic partnerships, but who oppose same-sex marriage. While both sides have intensified their efforts to achieve victories in statehouses, courts, ballot boxes, and Congress, domestic partner benefit programs have grown in popularity as a compromise solution that is acceptable to a large proportion of the American public. The term "domestic partner" itself is still in flux, but in general, it refers to an unmarried couple (same- or opposite-sex) who live together and who are committed to each other, certifying through some formal means that they are financially and legally interdependent.

American businesses have taken the lead in developing domestic partner benefit programs for their employees, believing that it makes good business sense. Employers see this as an inexpensive



way to attract and retain talent and to gain an advantage over the competition. Many of the nation's most competitive colleges and universities are doing the same, as are a number of states and municipalities. But while private-sector employers cannot be legally prohibited from offering these benefits, the rules governing public entities are much less clear. With the recent passage of many state statutes and constitutional amendments defining marriage, confusion reigns over the extent to which such language affects other legal relationships. New legal ground is continually being charted, and it is likely that the situation will remain volatile for many years to come.

In this context, higher education leaders and state policymakers will benefit from a greater familiarity with the issues surrounding domestic partner benefits programs to better inform policy decisions. This paper describes the key issues and addresses what is at stake for public colleges and universities.

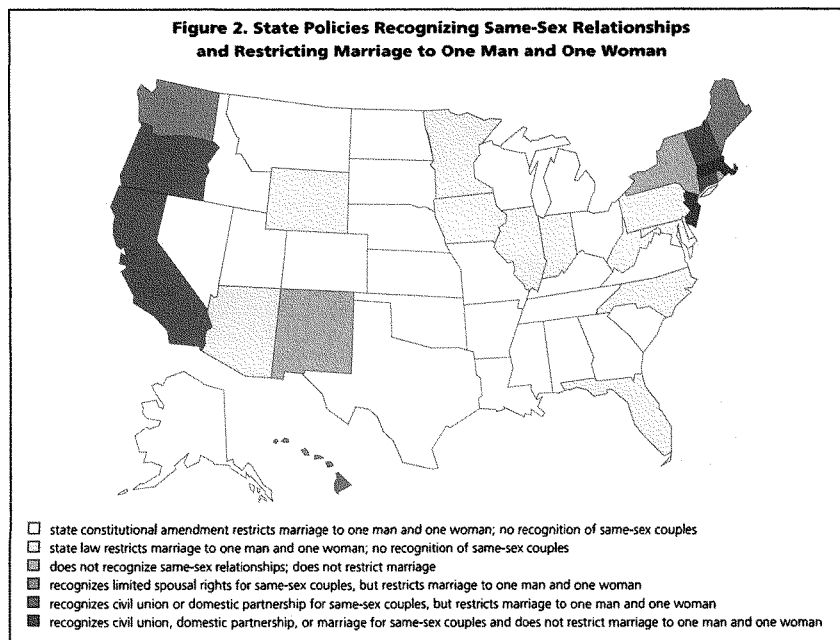
Observations

Over the past three decades, there has been growing public tolerance for gay rights in the country, and growing opposition to discrimination on the basis of sexual orientation. Though the nation remains deeply divided over certain gay-rights issues, there

is overwhelming public support for equality in the workplace. Recent Gallup Poll data indicate that 89 percent of Americans believe "homosexuals should have equal rights in terms of job opportunities," compared to 56 percent in 1977. There is less, but still growing, tolerance for gay rights in other areas of life (see Figure 1). In the same Gallup Poll, a majority of Americans (53 percent) adhere to the belief that "marriages between same-sex couples should not be recognized by the law as valid, with the same rights as traditional marriages," but nearly half (46 percent) believe such marriages should be valid. Other polls have reported support for same-sex marriage to be a bit lower, but all are documenting significant change over the past decade.

Evidence suggests some ambivalence on the topic of same-sex relationships. Many people want to be fair-minded, but they are uncomfortable about changing the traditional concept of marriage. Public opinion polls that provide three options—recognition of same-sex marriage, recognition of civil unions but not full marriage rights, or recognition of neither—illustrate this point. Polls taken in 2007 by both the CNN/Opinion Research Corporation and *Newsweek* indicate that one half of all Americans think that either same-sex marriages or civil unions should be recognized as legally valid, with support equally split between those favoring civil unions and those favoring marriage. Fewer Americans (about 44 percent) think that there

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should be no legal recognition of arrangements between same-sex couples.

Finally, support for gay rights is greatest among younger Americans and decreases as people age. This suggests that the trend toward greater acceptance of differences will continue.

There has been widespread state activity over the past decade prohibiting same-sex marriage, with the majority of states (44) crafting statutes or constitutional language defining marriage as between a man and a woman. A critical question is whether the language in these measures is broad enough to limit other legal rights for same-sex couples, including domestic partner benefits. In 1996, Congress passed the Defense of Marriage Act (DOMA) defining marriage for federal purposes as "only a legal union between one man and one woman" and allowing states to refuse to recognize same-sex marriages performed in other states. This stimulated a flurry of activity at the state level in an area where little legislation had existed before.

The vast majority of states have now enacted laws or constitutional amendments opposed to same-sex marriage (see Figure 2).

- Forty-one states have statutes similar to DOMA that restrict marriage to one man and one woman.
- Twenty-six states have added marriage amendments to their state constitutions to declare marriages between same-sex couples void or invalid. These are seen as stronger measures than state statutes because they prevent courts from ruling that same-sex marriage bans are unconstitutional, and they forbid recognition of same-sex marriages performed in other states. Proposed constitutional amendments are pending in 11 additional states.
- Only six states (Connecticut, Massachusetts, New Jersey, New Mexico, New York, and Rhode Island) and the District of Columbia have no provision against same-sex marriage.

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In examining the language of these marriage amendments, the Human Rights Campaign (HRC), an advocacy group working for gay equality, has identified 17 states with broadly written constitutional amendments that might have consequences for other legal relationships such as domestic partnerships. These are now at the heart of controversies in many states as supporters of domestic partner benefits argue that voters were misled; they argue that many citizens voted in support of state constitutional amendments, having been convinced by proponents that the referenda applied only to same-sex marriage. After passage of the amendments, these same proponents have called for a broader interpretation of the new constitutional language.

While some states are restricting recognition of same-sex relationships, a small but growing number have begun to recognize civil unions and domestic partnerships. Seven states offer a full range of spousal rights, and four jurisdictions offer more limited spousal rights to same-sex couples. Just this year, legislatures in three states took action to recognize same-sex relationships, more states to have done so in a single legislative season than ever before. When these laws go into effect in 2008, 20 percent of the U.S. population will be living in states that offer broad-based rights and responsibilities to same-sex couples. Prior to 2000, no states offered such recognition. But unlike traditional marriages, these relationships do not carry the federal protections of marriage (such as Social Security benefits, family medical leave, and so on), and they generally are not recognized outside of a state's jurisdiction.

Currently, Massachusetts is the only state in the nation in which same-sex couples may marry. This is the result of a 2003 Massachusetts Supreme Judicial Court decision that determined that the denial of protections, benefits, and obligations of marriage to same-sex couples violated the due-process and equal-protection clauses of the state's constitution.

Six states provide same-sex couples all or nearly all the rights and responsibilities of married couples through parallel arrangements. Four of these states offer civil unions: Connecticut, New Hampshire (effective 2008), New Jersey, and Vermont. Two offer domestic partnerships: California and Oregon (effective 2008). Four additional jurisdictions offer more limited spousal rights to same-sex couples: the District of Columbia, Hawaii, Maine, and Washington. In several cases, these states prohibit same-sex marriage, but have created a parallel legal structure to grant benefits, protections, and responsibilities.

Motivated by a desire to attract and retain high-quality workers, private businesses have taken the lead in offering domestic partnership benefits to their employees, with public entities following suit. Emerging research is documenting this as a cost-effective strategy for fully harnessing workforce potential. Benefits such as health and dental insurance are a significant component of the total compensation package offered by employers, and research has documented that benefit packages affect employee decisions and job satisfaction. Though benefits have traditionally been extended to the spouse and children of an employee, this has not been an option for same-sex couples, effectively resulting in lesser compensation. Employers have begun to recognize that extending benefits to domestic partners and their children can be a cost-effective way to recruit and retain talent, as well as a way to promote workplace equality. Many organizations have a policy against discrimination on the basis of sexual orientation, and in many jurisdictions, such discrimination is illegal. Offering partner benefits equalizes the compensation package and demonstrates commitment to non-discrimination.

Domestic partner benefits are not limited to same-sex couples. Hewitt Associates, a global human-resources consulting company, has found that 58 percent of organizations that offer domestic partner benefits offer them to both same-sex and opposite-sex couples.

To determine eligibility, employers require documentation of domestic partnership status in one of two ways. Some employers define their own requirements and develop a domestic partnership affidavit. The partners are typically required to certify that they are at least 18 years of age, unmarried, not related to each other, sharing a committed relationship that is exclusive, living together, and financially and legally responsible for each other. More employers are taking a second approach, which is to accept documentation from local or state domestic partner registries, state-level civil unions, or marriages (in Massachusetts). As the number of registries grows, the latter approach is gaining in popularity because it reduces the burden on employers.

Significantly, the largest and most successful companies are the most likely to offer domestic partner benefits, recognizing that they provide a competitive edge in the search for talent. Currently 269 of the Fortune 500 companies provide domestic partner benefits. Of the nation's 100 top-grossing law firms, 88 provide health benefits to same-sex partners of employees.

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Thirteen states offer at least some domestic partner benefits to state employees, and at least 145 city and county governments around the country offer them. This is occurring across the nation, even in states that prohibit same-sex marriage.

For both private and public entities, the cost of providing benefits has been a primary concern, at least at the outset, but a growing number of studies are documenting that costs are far less than anticipated. Research suggests that the actual number of people using these benefits has been modest, and the fiscal risks (i.e., costs) associated with these individuals are no greater than those of spouses. In Minnesota, for example, the total cost of providing state employee health benefits increased just 0.05 percent when domestic partner health benefits were added, equivalent to four cents per year per state employee. Studies by the Society for Human Resource Management, KPMG Peat Marwick, and the Employee Benefit Research Institute have similarly concluded that adding health-care benefits for domestic partners generally has a minimal financial impact on overall benefits costs, raising them at most by one to two percent. When looking at cost issues pertaining to statewide employee-benefits programs, studies have actually projected cost savings. This is due to the fact that when same-sex couples assume fiscal responsibility for one another in legally recognized arrangements, they save taxpayers money by reducing dependence on public-assistance programs.

Colleges and universities, led by private institutions, are increasingly extending benefits to domestic partners, but these institutions remain in the minority. Public institutions are proceeding at a slower pace and with greater caution, mindful of the appropriations power wielded by policymakers who may not agree with the policy. The Human Rights Campaign has identified 304 higher education institutions in the United States that offer domestic partner benefits. Mirroring corporate America, the more competitive institutions are at the forefront of efforts to utilize these benefits as a tool in attracting and retaining top faculty and staff. HRC indicates that 60 percent of *U.S. News & World Report's* top 125 colleges and universities offer partner benefits, a proportion higher than that of Fortune 500 companies (54 percent). Of *U.S. News'* top 10 colleges and universities, all offer domestic partner benefits; the same is true for all Ivy League universities. The University of Wisconsin is the only Big Ten conference school that does not offer partner benefits.

Provision of domestic partnership benefits is an issue for all of higher education, not just elite institutions. Approximately 141 public colleges and universities offer domestic partner benefits, and 25 states have at least one public institution that offers these benefits. Sixty-five members of the American Association of State Colleges and Universities (AASCU) do so, representing 15 percent of AASCU institutions. Comprehensive universities, in particular, have much to gain by offering competitive benefits packages since they have less money to offer in salaries. This could make a real difference in attracting talented faculty and staff and improving campus morale and workplace productivity.

In a 1995 resolution, the American Association of University Professors (AAUP) stated its opposition "to discrimination based upon an individual's sexual orientation in the selection of faculty, the granting of promotion or tenure, and the providing of other conditions and benefits of academic life." Faculty on campuses across the nation have taken up this cause, and even those who would not directly benefit from domestic partner benefits are calling for equal benefits on their campuses as a symbol of a non-discriminatory and inclusive community.

As to cost, domestic partnership benefits at public universities have not been a drain on state budgets. Data from the College and University Professional Association for Human Resources (CUPA) indicate that only 8 percent of institutions pay all health insurance costs for family coverage; it is far more common for employees to pay for some or all of the costs associated with covering additional family members. Also, in some instances, the employer portion of domestic partner benefits costs is paid for out of private donations so that no state money is used.

Political battles continue to be fought across the nation, and there are a growing number of legal challenges to public colleges' right to offer benefits to domestic partners. While Attorneys General and the courts in several states have concluded that domestic partner benefits do not violate state bans on same-sex marriage, others are reaching the opposite conclusion. The following state examples illustrate the volatility of the situation, the political and legal struggles being fought in the states, and the uncertainty university leaders are facing.

Wisconsin—Concerned about being at a relative disadvantage in the competition for faculty talent, Governor Jim Doyle proposed a measure to the state legislature in 2005 to provide funding for health insurance for domestic partners of employees. State legislators rejected this proposal.

In 2006, voters passed a constitutional amendment to prohibit same-sex marriage. Many groups, including the Board of Regents of the University of Wisconsin System, expressed concern that it might restrict domestic benefit programs, and the city of Madison, which has had a domestic benefit program since 1990, asked for clarification from the state's Attorney General. The AG declared that

"The absence of domestic partner benefits is really a serious recruiting issue for us. We know of instances where we have lost outstanding candidates because of it."

—University of Wisconsin at Madison's provost, 2005

the marriage amendment does not prohibit public or private employers from extending domestic partner benefits to non-married partners of employees, and that "neither the Legislature nor the people intended to invalidate domestic partnerships when they adopted this provision." UW still does not offer domestic benefits.

Michigan—When Michigan voters approved a state constitutional amendment in 2004 that banned recognition of marriage for same-sex couples or other "similar union for any purpose," confusion about the legality of domestic partner benefits arose. In a dispute pertaining to the city of Kalamazoo, the University of Michigan, Wayne State University, and the American Association of University Professors filed briefs with the court urging that the marriage amendment did not prohibit domestic partner benefits and arguing that such benefits were

"Given the economic crisis our state is in, discouraging an educated workforce from staying in Michigan . . . seems like a step backward instead of forward."

—Eastern Michigan University staff member, 2007

"vital to the universities' ability to recruit and retain the best and the brightest faculty and staff." In a 2005 decision, the judge backed the universities' position, arguing that health-care benefits are not a legal part of marriage, but rather part of an employment relationship and that awarding these benefits does not violate the "similar union" language of the constitutional amendment. However, in early 2007, an appeals court reversed that decision, ruling that the marriage amendment "prohibits public employees

from recognizing same-sex unions for any purpose." Though the American Civil Liberties Union (ACLU) will appeal the decision to the Michigan Supreme Court, Michigan State University and the University of Michigan have meanwhile broadened their domestic benefits plans to avoid the language of domestic partnerships. MSU's pilot program offers benefits to "Other Eligible Individuals," defined by neutral criteria that do not require documentation of a committed relationship. Similarly, the University of Michigan's program allows for benefit coverage for "Other Qualified Adults."

Kentucky—In July 2006, the University of Louisville became the first university in the state of Kentucky to offer domestic partner benefits, and the University of Kentucky followed in April 2007. Members of the state legislature who were opposed to this development asked the state Attorney General to issue an opinion. In June 2007, the AG asserted that these two programs violated the state's marriage amendment that bars recognition of any same-sex status "substantially similar" to marriage. However, he opened the door to other types of benefits approaches, suggesting a solution similar to what was done in Michigan—broadening the definition of eligible individuals to others who live in the household under circumstances that do not resemble marriage. UK responded by creating a Sponsored Dependent Coverage plan based on sharing a residence for at least a year, but not classifying the dependent as a domestic partner. U of L has developed a similar plan that would provide coverage for one "qualifying adult." The matter is not settled, however. Governor Ernie Fletcher is pushing for legislation that would ban benefits to domestic partners of state university employees.

"We are not endorsing any lifestyle. We are simply recognizing that people are people. We are recognizing the world we live in."

—University of Louisville trustee, 2006

Ohio—In 2005, a state representative from Cincinnati filed a lawsuit against Miami University, contending that its domestic partner benefits policy violates the state marriage amendment. That measure prohibits state agencies from creating or recognizing relationships that "approximate the design, qualities, significance or effect of marriage." His lawsuit stated that he had grounds to sue the institution as both a taxpayer and a tuition-paying parent. A judge dismissed the case in 2006, ruling that the legislator did not have standing

Miami University officials "have thumbed their noses at the Constitution."

—Ohio lawmaker, 2005

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to sue because he was not significantly affected by the university policy, but he added that others might have standing to file such a lawsuit. A 2007 appeals-court decision upheld the lower court's ruling that the legislator did not have standing to sue on either ground: first, taxpayers do not have a general right to challenge any decision by a public entity, and second, tuition funds are not used to pay for the benefits. The legislator could appeal to the state Supreme Court, or other lawsuits could follow.

Conclusion

With public opinion increasingly supporting equity and fair compensation in the workplace, and with full marriage equality for same-sex couples unlikely in the foreseeable future, legal recognition of same-sex couples in the form of domestic partnerships seems here to stay and likely to grow. Leaders of public higher education and state policymakers need to understand what the competition already recognizes: that offering domestic partner benefit programs is a cost-effective strategy to attract and retain faculty, staff, and administrators from a greater pool of talent. And of equal importance, offering these programs is essential if the nation's public institutions are to demonstrate their commitment to social and economic justice, diversity, and inclusiveness.

For many public institutions, adopting policy that allows for the offering of domestic partner benefits may well be a significant public-relations challenge, but, as the experience of 25 states demonstrates, it is not insurmountable. The process can be particularly difficult in states where lawmakers hold conservative views about marriage and have fears about a negative impact on state budgets. It is incumbent upon both higher education leaders and policymakers to learn the facts as they relate to public policy and economic competitiveness, and to make informed decisions.

Resources

American Association of University Professors (AAUP). *Domestic Partner Benefits on Campus* (2005) describes AAUP's position and reviews recent domestic partnership litigation involving faculty.
aaup.org/AAUP/protect/legal/topics/partners.htm

American Civil Liberties Union (ACLU). ACLU's Lesbian Gay Bisexual Transgender (LGBT) Project fights LGBT discrimination and engages in legal and public-education efforts to recognize same-sex relationships. It produces an annual report providing a state-by-state update of political activity and litigation pertaining to LGBT issues.
aclu.org/lgbt

Domawatch.org. Domawatch.org is a project of the Alliance Defense Fund, a conservative Christian organization that supports the preservation of marriage as a union of one man and one woman. It tracks lawsuits related to the issue of same-sex marriage and provides detailed information on state and federal circuit-court cases.
domawatch.org/

Gallup Poll News Service. Gallup's annual Values and Beliefs Survey has collected data for over 30 years on trends in public tolerance for gay rights.
galluppoll.com/content/?ci=27694&pg=1

Human Rights Campaign (HRC). HRC is an advocacy group that works to achieve gay equality. Its resources include a database of employers that offer domestic partnership benefits, analysis of marriage- and relationship-related bills and ballot initiatives, and an annual update on workplace issues for gay Americans.
hrc.org

National Conference of State Legislatures (NCSL). NCSL tracks state legislative activity pertaining to same-sex marriage, civil unions, and domestic partnerships, including results of the 2006 elections and a timeline of same-sex-marriage political and legal activity since 2003.
ncsl.org/programs/cyf/samesex.htm

Stateline.org. *Same-Sex Marriage Ripe for Decision in 2 Courts* provides excellent background on this issue, including a timeline of key events and a summary of state policies.
stateline.org/live/digitalAssets/9339_Same-sex_marriage.pdf

Contact: Alene Russell, State Policy Scholar
at 202.478.4656 or russella@aacu.org • aacu.org

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TESTIMONY on HR 2517: "Domestic Partnership Benefits and Obligations Act of 2009"
M.V. Lee Badgett, Ph.D.
University of Massachusetts Amherst

Good afternoon. My name is M. V. Lee Badgett. I am the Director of the Center for Public Policy and Administration and a professor of economics at the University of Massachusetts Amherst. I also serve as Research Director of the Williams Institute on Sexual Orientation Law and Public Policy at the UCLA School of Law. Over the last fifteen years, I have conducted extensive research on economic and policy issues related to sexual orientation, including several studies of the cost of granting domestic partnership benefits to employees' same-sex partners. I have consulted with many businesses, large and small, on domestic partnership benefits, and I have written reports on this issue for several states. I thank you for the opportunity to speak today about HR 2517, the "Domestic Partnership Benefits and Obligations Act of 2009."

This important legislation would put the federal government in the mainstream of modern compensation practices with respect to the equal treatment of the same-sex partners of federal employees. Over the last fifteen years, domestic partner health care benefits have become a common practice among public and private sector employers. Twenty states now offer benefits to the domestic partners of state employees: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia. More than 250 cities, counties, and other local government entities cover domestic partners of other public employees. In the private sector, almost two-thirds of the Fortune 1000, and 83% of Fortune 100 companies also provide these benefits. These employers have

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generally reported that the implementation of domestic partner benefits has been quite easy and the cost quite manageable.

The employees who receive these benefits gain in terms of security, signing up for such benefits to protect their families' health and well-being. A study that I recently co-authored found that 20% of people in same-sex couples are uninsured, a rate that is significantly higher than average in the United States and is at least partly the result of employers' failure to offer domestic partner benefits. That study suggests that many federal employees' partners and children may currently be completely uninsured. We also know from many studies that uninsured individuals often receive health care that goes uncompensated, shifting costs to the federal, state, and local governments, as well as private insurers.

One of the most common questions about offering domestic partner benefits concerns their direct cost to employers. Last year I co-authored a study that estimated the cost of extending domestic partner benefits to the more than 34,000 same-sex partners of federal employees. We used data from the American Community Survey, conducted by the U.S. Census Bureau, and statistics from the Bureau of Labor Statistics to estimate the number of federal employees who are likely to enroll a same-sex partner in federal benefits specified by this legislation. We drew on data about the cost of federal employee benefits from various sources.

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Based upon figures about the cost of providing benefits to federal employees and future retired federal employees, we estimated that providing these vital benefits for non-postal employees would cost approximately \$41.0 million in the first year and \$675 million over ten years. The majority of these costs are concentrated in the areas of employee health benefits and retiree health benefits.

Health benefits for the same-sex partners of federal employees (including postal service employees) and their dependent children would cost \$60.4 million in the first year – that is a 0.41% increase in healthcare spending for employees in 2008. Not all 34,000 employees with same-sex partners would enroll their partners. Both partners are federal employees in some same-sex couples, and more than half of the remaining partners are likely to have health insurance offered through their own employers. Overall, enrollment in health care plans would increase by a small percentage, approximately 0.55%.

As current federal employees retire in the future, the cost of health benefits for retirees' partners would increase by \$127 million over ten years. The retirement savings program would actually see a reduction in annuity payments over the short-term as federal employees opt for survivor benefits for their same-sex partners. This reduction amounts to \$108 million over ten years. These findings are similar to those found in the Congressional Budget Office's analysis of an earlier bill that would have provided domestic partner benefits to same-sex and different-sex partners.

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Costs for other benefits specified in the bill are minimal, such as relocation reimbursements for transferred employees and death and disability claims. While not expensive, the ability to take Family Medical Leave, to enroll a partner in life insurance or long-term care insurance, or to receive death or disability benefits are important benefits to federal employees and can make a large difference in the lives of these employees.

Several factors will help offset some of these costs. First, the federal government is likely to receive increased tax revenue as a result of extending domestic partner benefits to same-sex couples. Employees with same-sex partners currently pay additional federal taxes on the imputed value of domestic partner benefits. Over ten years the additional tax revenue associated with granting domestic partner benefits to federal employees would be approximately \$118 million.

Second, the federal government is likely to see reduced costs of employee turnover if this bill were to be passed and signed into law. The federal government now competes with many large and prominent employers who already offer domestic partner benefits to the same-sex partners of lesbian, gay, and bisexual (LGB) employees, as noted earlier. When the federal government loses an employee to one of those companies or to the state and local governments in the Washington area who offer partner benefits, the government must spend money to recruit, train, and attempt to retain a new employee. While it is difficult to precisely

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predict the savings from avoiding these turnover costs, they are certainly real. Two studies have found that domestic partner benefits reduce the likelihood that an LGB employee will consider leaving his or her job.

Putting these pieces together suggests that the federal government is likely to see these less precisely measurable gains offset the relatively small but measurable cost of offering equal benefits to the same-sex partners of federal employees. The experience of thousands of employers offering domestic partner benefits in the United States today, as well as research by myself and other scholars support my conclusion that the federal government can adopt and implement this new policy easily and affordably. HR2517 will also greatly enhance the financial security of the 34,000 federal employees with same-sex partners, and that sense of security will also generate benefits for their employer.

FACTS from EBRI

Employee Benefit Research Institute • 2121 K Street, NW, Suite 600 • Washington, DC • 20037

February 2009

Domestic Partner Benefits: Facts and Background

(Updated February 2009)

- **What is a "domestic partnership" and what proof of the relationship is required?**
 - Domestic partner benefits are benefits that an employer chooses to offer to an employee's unmarried partner, whether of the same or opposite sex.
 - An employer wishing to implement a domestic partner program needs to create a definition of what an eligible domestic partner is. The most common definitions contain four or five core elements: 1) The partners must have attained a minimum age, usually 18; 2) Neither person is related by blood closer than permitted by state law for marriage; 3) The partners must share a committed relationship; 4) The relationship must be exclusive; 5) The partners must be financially interdependent.
 - An employer also must decide whether the domestic partner program is to cover same-sex couples only or include opposite-sex couples.
 - Documentation of proof of a domestic partner relationship can take many forms. It is up to the employer to determine what is appropriate. Some employers are satisfied with the partners signing a written statement of their relationship. Some employers may require proof of some financial relationship, such as a joint lease or mortgage. Whatever documentation is required must be germane to the issue of validating a domestic partnership, or it could lead to claims of invasion of privacy.

- **What is included in domestic partner benefits and how many employers offer this benefit?**
 - Most employers that offer domestic partner benefits to their workers offer a range of only low-cost benefits, such as family/bereavement/sick leave, relocation benefits, access to employer facilities, and attendance at employer functions. However, most public attention involving domestic partner benefits involves employers that offer health insurance coverage to domestic partners.
 - According to a 2007 survey by Hewitt Associates, 54 percent of surveyed firms offered coverage for domestic partners. Seventeen percent of firms offered domestic partner coverage to same-sex couples only; 1 percent of firms offered coverage to opposite-sex couples only; 32 percent of surveyed firms offered coverage for same or opposite-sex couples. According to a 2005 Hewitt Associates study, of those employers that offered domestic partner benefits, 83 percent offered the coverage to dependents of domestic partners. These numbers represent a significant increase since 2002, when 19 percent of surveyed firms offered domestic partner benefits.
 - According to the Human Rights Campaign Fund, which describes itself as the largest national lesbian and gay political organization in the United States, as of May 16, 2008, 9,374 employers offered domestic partner benefits. Of that number, 8,653 are private-sector companies, with 270 of the Fortune 500 companies offering domestic partner benefits. A listing of firms that offer full health insurance coverage to domestic partners is posted by the Human Rights Campaign at www.hrc.org/

- **Why an employer offers domestic partner benefits:**
 - *Market competition and diversity*—The attraction to employees of a comprehensive benefits package that offers health and retirement coverage is well-documented. Given the typically diverse contemporary work force, some employers try to design their benefits package to appeal to that diversity and maintain a recruitment edge. According to a 2005 Hewitt Associates study, the number-one reason for offering domestic partner benefits was to attract and retain employees (cited by 71 percent of organizations offering benefits to same-sex couples and 69 percent to opposite-sex couples).
 - *Fairness*—Many employers believe that by offering benefits to legally married partners of employees and not offering the same benefits to the partners of non-legally married employees discriminates on the basis of sexual orientation and/or marital status. Many employers have a formal policy against discrimination on the basis of sexual orientation, as the practice is illegal in some jurisdictions. The decision to offer domestic partner benefits communicates to employees that the employer is committed to its stated policy. According to a 2005 Hewitt Associates study, there was no statistical difference among organizations that

said offering domestic partner benefits to same-sex (65 percent) and opposite-sex (64 percent) couples was the fair/right thing to do.

■ **Costs of domestic partner benefits:**

- This is the primary concern for employers, especially with regard to health benefits, since extending coverage to more individuals increases the cost of health benefits. There are two components driving the cost issue: 1) How many new enrollees the plan can expect to receive; and 2) What risks are likely to be associated with those individuals. In 2005, Hewitt Associates found that in 88 percent of the organizations that offer domestic partner benefits, they comprise less than 2 percent of total benefit costs.
- In a 2005 study of domestic partner benefits, Hewitt Associates found that on average 1 percent of eligible employees offered domestic partner coverage in the health plan actually elected to take it. Many employers, in the planning stage, had anticipated an enrollment rate of 10 percent. In an earlier 1994 study, Hewitt found employers that allow only same-sex couples to enroll domestic partners in the health plan reported a lower enrollment rate, compared with those employers that allow opposite-sex couples to enroll. Overall, Hewitt found in 1994 that 67 percent of the couples electing domestic partner coverage were opposite-sex couples.
- Hewitt found, in 2000, that employers are no more at risk when adding domestic partners than when adding spouses. Experience has shown that the costs of domestic partner coverage are lower than anticipated. There are several reasons why: The employees eligible for domestic partner coverage tend to be young, and, as a result, healthy; enrollment in domestic partner coverage is low, primarily due to the fact that most domestic partners already have coverage through their own employers; any increased risk of AIDS among male same-sex couples appears to be offset by a decreased risk among female same-sex couples; and same-sex domestic partners have a very low risk of pregnancy.
- Most recent estimates (1996) of the lifetime costs of treating a person with HIV disease range from \$71,143 to \$424,763. By way of comparison, the cost of a kidney transplant can be as high as \$200,000, and the cost of premature infant care can run from \$50,000 to \$100,000.

■ **Qualification for benefit privileges under current federal law:**

Tax Treatment

- The U.S. Internal Revenue Service (IRS) has addressed the issue of domestic partner coverage in several private letter rulings. According to those rulings, employment-based health benefits for domestic partners or nonspouse cohabitants are excludable from taxable income only if the recipients are legal spouses or legal dependents. The IRS also states that the relationship must not violate local laws in order to qualify for tax-favored treatment. See below for a discussion of the 1996 Defense of Marriage Act.
- The IRS leaves the determination of marital status to state law.
 - ◆ *Tax-Favored Treatment*—There are 11 states plus the District of Columbia that recognize common law marriages* and all states recognize common law marriages legally contracted in those jurisdictions that permit it. (http://topics.law.cornell.edu/wex/table_marriage) Couples in those jurisdictions that have a common law marriage do receive the tax favorable treatment in an employment-based plan for domestic partner coverage.
 - ◆ *No Tax-Favored Treatment*—See below for discussions of California's, Connecticut's and Massachusetts' recognition of same-sex marriages. Some cities (i.e., San Francisco and New York City) allow domestic partners to register their relationship with the city, but these registries do not provide legal status as marriage or common law marriage.
- The tax, for those who do not receive tax-favored status, is determined by assessing a fair market value for covering the domestic partner. This amount is then reported on the employee's W-2 form and is subjected to Social Security FICA and federal withholding taxes.
- Employees with domestic partners, including same-sex spouses, can get federal tax-free employer health benefits in two ways: (i) the partner qualifies as the employee's tax dependent for health plan purposes or (ii) the employee claims a federal tax exemption for the partner.

Sec. 125 Flexible Benefits and Spending Accounts

- Employee flexible benefit allowances that include extra money or credits toward providing coverage for a domestic partner are treated as taxable income.
- Flexible spending account benefits may not be provided to a domestic partner because such accounts can include only nontaxable income.

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

- Under federal law, no requirement exists that a plan must extend COBRA rights to domestic partners who lose coverage due to what would otherwise be a qualifying event. An employer may choose to extend COBRA coverage to a domestic partner but is under no legal obligation to do so.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- Domestic partners may not be considered as dependents. However, an employer that provides health insurance to domestic partners may want to include them in the certification procedure for documenting the partnership and apply the other HIPAA requirements for consistency in administration.

Defense of Marriage Act of 1996 (DOMA)

- For purposes of federal tax law and benefits, DOMA established federal definitions of (a) "marriage" as a legal union only between one man and one woman as husband and wife; and (b) "spouse" as a person only of the opposite sex who is a husband or wife. Because of DOMA's provisions, if a state extends marriage to same-sex couples, same-sex partners would not be treated as spouses for federal tax and employee benefit purposes.
- Because marriages are granted through state law, DOMA also gives states the choice to recognize same-sex marriages legally performed in other states. The law does not specifically outlaw same-sex marriage, and states remain free to recognize same-sex marriage if they so choose. But by making one state's recognition of another state's legal acts optional in this instance, DOMA essentially creates an exception to the Full Faith and Credit Clause of the U.S. Constitution, thus raising constitutional questions concerning the validity of the law. Because Vermont created a parallel civil union rather than sanctioning same-sex marriage, the new law does not create an opportunity to challenge DOMA's constitutionality. Since the enactment of DOMA in 1996, the issue has not come before the U.S. Supreme Court for a decision.
- Among the states that ban same-sex marriage, 16 do so by law; eight do so by state constitution; and 18 states ban same-sex marriage and civil unions by state constitutions.
www.hrc.org/your_community/index.htm

■ **State and local government actions affecting domestic partner benefits:**

Benefits generally are regulated at the federal level by the Employee Retirement Income Security Act of 1974 (ERISA), and private employers that choose to offer domestic partner benefits must follow federal law (see section above). Most recent legal activity concerning domestic partner benefits has involved state and local governments acting in their capacity as employers, but subject to local political and legal circumstances. As a result, some jurisdictions have taken very different approaches to the issue, such as:

Connecticut Supreme Court, Elizabeth Kerrigan et al. vs. Commissioner of Public Health, et al.

- October 28, 2008, Connecticut became the third state to legalize same sex marriage in a 4-3 ruling by the state's Supreme Court. (www.jud.state.ct.us/external/supapp/Cases/AROCr/CR289/289CR152.pdf)
- The state enacted a civil union law in 2005 that provides same-sex couples with some of the same rights and responsibilities under state law as marriage. Connecticut became the second state in the United States (following Vermont) to adopt civil unions, and the first to do so without judicial intervention.
- In the case *Kerrigan v Commissioner of Public Health*, eight same-sex couples argued that the state's civil union law was discriminatory and unconstitutional because it established a separate and therefore inherently unequal institution for a minority group. Citing equal protection under the law, the state Supreme Court agreed.

California Supreme Court, In re Marriage Cases

- May 15, 2008, the California Supreme court ruled by 4-3 that marriages between people of the same sex are legal, thereby overturning an existing statutory ban on same-sex marriage. The ruling went into effect June 14, 2008. (www.courtinfo.ca.gov/opinions/documents/S147999.PDF)
- Proposition 8 "Limit on Marriage" would amend the California state constitution to define marriage as between one man and one woman. Fifty-two percent of the electorate voted in favor of Proposition 8 in November 4, 2008, general election. The California Supreme Court agreed to consider challenges to Proposition 8 in March 2009. (www.courtinfo.ca.gov/courts/supreme/highprofile/prop8.htm)

Supreme Judicial Court of Massachusetts, Hillary Goodridge & others vs. Department of Public Health & another

- The Massachusetts Supreme Judicial Court held Nov. 18, 2003, that "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution." The court stayed the entry of judgment for 180 days "to permit the Legislature to take such action as it may deem appropriate in light of this opinion."
(<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=ma&vol=sjcslip/sjcNov03c&invol=1>)
- The Massachusetts State Senate asked the court for an advisory opinion as to whether legalized civil unions would be sufficient for same-sex couples. The court ruled on Feb. 6, 2004, that they would not, saying, "Because the proposed law by its express terms forbids same-sex couples entry into civil marriage, it continues to relegate same-sex couples to a different status. ... The history of our nation has demonstrated that separate is seldom, if ever, equal."
- The state court's decision providing state recognition of same-sex marriages went into effect on May 18, 2004. On March 29, 2004, the state legislature narrowly passed a state constitution amendment ballot measure that would overturn Goodridge. The amendment must be approved a second time in the 2005-2006 session of the legislature. On June 14, 2007, the effort to ban same-sex marriage by amending the state constitution was defeated.
- At this point it is unknown what impact the Massachusetts action might have on the federal Defense of Marriage Act, although it is speculated that a challenge arising out of a Massachusetts same-sex marriage (if one occurs) ultimately will test the legality of DOMA before the U.S. Supreme Court. In November 2004, the U.S. Supreme Court refused to hear a case trying to overturn the Massachusetts decision.

San Francisco City Marriages

- On Feb. 12, 2004, San Francisco Mayor Gavin Newsom ordered the city to begin approving same-sex marriages, and since then city clerks have conducted hundreds of same-sex marriage ceremonies. While state law and a voter-approved referendum passed in 2000 (Proposition 22) define marriage as a union of a man and a woman, Newsom maintains that the state constitution's broad equal protection clause pre-empts those laws. Legal challenges to the city's action currently are underway.

Vermont's Civil Union Law for Same-Sex Couples, Effective July 1, 2000

- On April 26, 2000, Vermont's governor signed into law H. 847 (Act 91) establishing a system of civil unions for same-sex couples, effective July 1, 2000. Couples entering into a civil union in Vermont will have the same state-guaranteed rights and privileges (and obligations) as married couples, even though they will not be considered "married" under state law.
- The highly controversial law stemmed from a unanimous ruling Dec. 20, 1999, by the state Supreme Court (*Stan Baker et al., vs. State of Vermont et al.*), which held that there was no state constitutional reason for "denying the legal benefits and protections of marriage to same-sex couples." The case could not be appealed to a federal court because the ruling was based on Vermont's constitution, so federal law did not apply.
- The Vermont Supreme Court did not give permission for legalizing same-sex marriages, but instead ordered the state legislature to come up with some method for implementing its decision. Because the legislature created a domestic partnership equivalent to marriage, employers are expected to be able to retain more design flexibility over their benefit plans, and ERISA will shield self-funded employers from being forced to cover "domestic partners" of Vermont employees.

Benefit Provision

- Because ERISA pre-empts state law provisions that relate to employee benefit plans, private employers will not be required to recognize civil unions as marriages for the purposes of employee benefit plan design. The exception to this is with regard to state family leave benefits and workers compensation benefits, which are not ERISA-covered programs.
- Insurers in Vermont are required to offer coverage to parties in civil unions and their dependents if they offer such coverage to spouses and dependents. It appears that employers are not required to purchase such policies for their employees. The insurance provisions of the law took effect on Jan. 1, 2001.

Who Is Eligible for a Civil Union and What Are the Rights and Benefits?

- Civil unions are available to two unrelated persons of the same sex who:
 - 1) Are at least 18 years old.
 - 2) Are competent to enter a contract.

- 3) Are not already married or in a civil union.
- 4) Have a guardian's written permission if they are under a guardianship.

There is no residency requirement, but to dissolve a civil union the parties must follow the same procedures required for divorce.

- Parties to a civil union have exactly the same rights and obligations as married couples and are subject to the state domestic relations laws regarding support, custody, property division, and dissolution of the relationship.

Reciprocal Beneficiary Relationships

- Related persons who cannot marry or enter into a civil union (i.e., siblings) can now enter into a "reciprocal beneficiary" relationship. This relationship will entitle them to more limited spousal-type rights than civil unions. Generally, these rights relate to health care decisions, hospital visits, and durable power of attorney for health care (Hawaii has had a similar reciprocal beneficiary law since 1997).
- Two states have enacted civil union laws which provide all the same rights and responsibilities as marriage: New Hampshire (www.gencourt.state.nh.us/legislation/2007/2007-HB0437.html) and New Jersey (www.njleg.state.nj.us/2006/Bills/A4000/3787_11.PDF)

San Francisco Nondiscrimination in Contracts-Benefits Ordinance, Effective Jan. 1, 1997

- The Air Transport Association of America successfully sued the City of San Francisco, claiming airlines do not have to comply with the city's ordinance because the airlines' benefit packages are governed by federal law, specifically ERISA, which pre-empts state and local laws with regard to employee benefits. In an April 10, 1998, ruling, the U.S. District Court for the Northern District of California upheld the San Francisco ordinance *except* with regard to airlines. In her ruling, Judge Claudia Wilkens stated that the city acts as a "market participant" in dealing with city contractors—other than airlines—and the law therefore does not violate the ERISA pre-emption provisions. However, in the city's dealing with airlines at the city-owned airport, the city acts as a regulator, and not a market participant, so therefore the ordinance is pre-empted by ERISA with regard to the airlines, the judge ruled. The ruling applies the "market participant" standard to situations where the city wields no more power than an ordinary consumer in its contracting relationships.
- In November 1999, Los Angeles and Seattle joined San Francisco in enacting an ordinance that requires private employers that contract with the cities to provide benefits to the domestic partners of workers.

State and local governments as employers

Because state and local laws tend to vary significantly, there can be sharply different approaches by state and local governments—acting as employers—in the benefits they offer to their workers. For example:

- Virginia—In April 2000, the Virginia Supreme Court, in a unanimous ruling, struck down Arlington County's domestic partner benefits ordinance, holding that the county had exceeded its authority under state law.
- Oregon—A 1998 state appellate court ruling (*Tanner v. Oregon Health Sciences University*), held that the Oregon Constitution requires all state and local government agencies to offer equal benefits to gay and married employees.

For more information, contact Ken McDonnell, (202) 775-6367, or see EBRI's Web site at www.ebri.org.
Sources: Melody A. Carlsen, "Domestic Partner Benefits: Employer Considerations," *Employee Benefit Practices*, International Foundation of Employee Benefit Plans (fourth quarter 1994); Hewitt Associates, *Domestic Partners and Employee Benefits: 1994*, Research Paper (Lincolnshire, IL: Hewitt Associates); Hewitt Associates, *Survey Findings: Domestic Partners 2000* (Lincolnshire, IL: Hewitt Associates, 2000); Hewitt Associates, *Survey Findings: Benefit Programs for Domestic Partner & Same-Sex Couples 2005* (Lincolnshire, IL: Hewitt Associates, 2005); Hewitt Associates, *SpecSummary: United States Salaried: 2007-2008* (Lincolnshire, IL: Hewitt Associates, 2007); Barry Newman, Paul Sullivan, RTS, and Michele Popper, *Domestic Partner Benefits: An Employer's Perspective* (Newburyport, MA: Alexander Consulting Group, June 1996); Washington Resource Group of William M. Mercer, Inc., "Vermont Enacts Civil Union Law for Same-Sex Couples," *GRIST Report* (May 15, 2000).

* For a listing of states recognizing common law marriage, see *Common Law Marriage* at ExpertLaw. (www.expertlaw.com/library/family_law/common_law.html)

[†] The United States Constitution ordinarily requires every state to accord "Full Faith and Credit" to the laws of its sister states. Thus, a common law marriage that is validly contracted in a state where such marriages are legal will be valid even in states where such marriages cannot be contracted and may be contrary to public policy. Note: Under current law, this applies to common law marriages only; not all states permit common law marriages; and DOMA defines marriage as between a man and woman (see the section on DOMA above for application to same-sex marriages). For a discussion of the legal issues involved in *Common Law Marriage*, see ExpertLaw. (www.expertlaw.com/library/family_law/common_law.html)



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Phone: 617.426.1350
Fax: 617.426.3594
Website: www.glad.org

DOMESTIC PARTNERSHIP BENEFITS: EQUAL PAY FOR EQUAL WORK

By Mary L. Bonauto, Esq.

What do American Express, Apple Computer, Blue Cross/Blue Shield of New Hampshire, the City of Baltimore, the University of Maine System, Walt Disney, Levi Strauss, Coors Beer and the State of Vermont have in common? They are all part of a growing list of private companies and public entities which have extended domestic partnership benefits to their employees.¹ These companies, colleges, universities, cities and towns have all discovered that providing these benefits for their employees is a pro-family policy that recognizes equal pay for equal work, has low costs, and is the right thing to do.

Why Employers Should Consider Providing Domestic Partner Benefits

Even though some same-sex couple can now access partner benefits through marriage, civil unions or state-registered domestic partnerships, even in those places where this access is granted, there are many reasons why a same-sex couple may not wish to access benefits this way. Marriage-based benefits also exclude non-gay couples who have chosen not to marry for personal, religious or financial reasons. Benefits are a significant form of compensation to employees and inequality in access can mean a considerable financial hardship for employees.² It is therefore an issue of equal pay for equal work; an issue of fairness in the workplace.

In addition to eliminating discrimination in access to benefits, the availability of domestic partnership benefits can also be important in attracting and retaining qualified employees. All else being equal, the quality of a benefits package can be the deciding factor in whether a particular employee will chose to work for one employer over another, or stay with an employer over the long term.³

Who Should Be Eligible For Benefits

It is not difficult to develop a set of eligibility criteria for benefits in lieu of marital status. Most domestic partner plans share common parameters: (1) the employee and partner must be unmarried adults and competent to contract; (2) they must not be related by blood in a way that would bar marriage; and (3) they

¹ For a current list see the Human Rights Campaign publication, *The State of the Workplace for Gay, Lesbian, Bisexual and Transgender Americans*, at http://www.hrc.org/documents/State_of_the_Workplace.pdf.

² So-called "fringe benefits," including health coverage, can account for as much as thirty percent of an employee's compensation. Melody A. Carlsen, *Domestic Partner Benefits: Employer Considerations*, *Employee Benefits Practices*, 3 (Intnl. Found. Employee Benefit Plans, 4th Qtr. 1994); U.S. Chamber Research Center, *Employee Benefits* at 18, Table 6 (U. S. Chamber of Commerce Research Center, 1992 Edition).

³ See Stanford University Committee on Faculty and Staff Benefits, *Report of the Subcommittee on Domestic Partners' Benefits* (June, 1992) pp. 12-38. This is by far the most comprehensive examination of the philosophical and practical underpinnings of employee benefits plans. It analyzes family benefits as an efficient compensation strategy, as a means of maximizing available tax benefits for employees, as a means of providing health coverage of the otherwise uninsured, as needs-based compensation and as a subsidy to families.

must be in a close and committed relationship with one another.⁴ In addition, some plans require employees to reside together or intend to do so and to have some degree of financial interdependence.⁵ Virtually all plans require the employee to notify them in writing if the partnership terminates.

These requirements are traditionally put in the form of an affidavit to which both partners attest. Some employers also require employees to sign a statement which warns of the legal consequences of providing false information, including dismissal of the employee and reimbursements for benefits paid.⁶

The other principal question is whether an employer may offer benefits to same-sex couples only, or must also offer benefits to unmarried heterosexual partners. According to leading authorities like the Stanford Report (see note 2), it is good practice to provide benefits to both same and different sex couples. The most common reasons why some employers choose to include only same-sex couples are that (1) these individuals cannot choose to marry while heterosexual couples can and (2) lower costs.⁷

What Benefits Should An Employer Offer

The short answer to this question is that the same benefits that are available to the spouse of a married employee should be extended to the domestic partnership. Certainly, the most important benefit is health insurance. Other benefits that can be included are death and bereavement leave, and the voluntary inclusion of domestic partners in the provisions of the Family and Medical Leave Act so that employees may take leave to care for their domestic partners and the children of their partners. Similarly, employers are not required to extend domestic partnership benefits under COBRA but some companies have devised plans that provide continuation of coverage for domestic partners upon the termination or the death of the employee. It is worth noting that some of these benefits cost employers next to nothing.

Concerns About Cost Are Easily Answered

The data accumulated for over 10 years by employers across the country shows that fears about domestic partnership benefits being too expensive are largely unfounded. The Wall Street Journal long ago reported, "the added benefits turn out to be surprisingly cheap."⁸ Hewitt and Associates concluded in its 1994 Domestic Partners and Employee Benefits Report that "[g]enerally speaking, and contrary to warnings and predictions by insurers and others, extending coverage to domestic partners has not resulted in statistically significant differences in cost."⁹ The Stanford Report projected that for employers with a same-sex only

⁴ Osborne, The New Beneficiaries, Plan Sponsor 34, 36 (Nov. 1994).

⁵ See Glaser & Wolf, Facing Domestic Partner Issues, Business & Health 53 (Feb. 1994); Laarman, Employer Health Coverage for Domestic Partners--Identifying the Issues, Employee Rel. L. J. (Mar. 22, 1993).

⁶ However, many industry analysts confirm that "this type of abuse. . . has not been reported among employers providing the benefit." See "Domestic Partner Benefits: Employer Considerations", Employee Benefit Practices (4th. Qtr. 1994) at 4-5; Laarman at 3 (employers have reported no cases of abuse).

⁷ People are invited to call Gay & Lesbian Advocates & Defenders (800-455-GLAD or 617-426-1350) for a technical legal analysis and case updates.

⁸ David Jefferson, "Gay Employees Win Benefits for Partners at More Corporations," Wall Street Journal, Mar. 18, 1994, at 1. See also, Barge, More Firms Offer Benefits to Gay Couples, ABA Journal at 34 (June 1995)

⁹ Hewitt and Associates is an international firm of consultants and actuaries which works with employee benefit and compensation programs. Hewitt and Associates, Domestic Partners and Employee Benefits 1994 at 7 (1994).

This document contains legal information, not legal advice. For legal advice about a specific situation you must consult an attorney.

Founded in 1978, Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization for lesbians, gay men, bisexuals and people living with HIV. GLAD's mission is to achieve full equality for all individuals in these groups, primarily through impact litigation and education.

plan only 0.3 to 0.7% of employees would enroll while for unmarried heterosexual couples that comparable projected enrollment figure is 0.5 to 2.5%. At these levels, cost increases range from 0.5 to 1.5%.¹⁰

Adverse selection, or the fear that employees would choose to enroll their unhealthy friends as domestic partners, "has not been a problem."¹¹ Similarly, some employers are concerned that their costs will increase because by enrolling same-gender gay couples, they may face increased claims for HIV-related care, and that this increase will adversely affect the cost of their entire plan. This fear is unfounded and based on misinformation. AIDS and HIV do not solely affect gay or unmarried people. While gay men may be a higher risk of HIV infection, male couples do not incur costs for pregnancy and childbirth, which are commonly high. Similarly, lesbians, who tend to place their partners on plans four times more frequently than gay male employees, have a lower risk of HIV infection than either gay men or heterosexuals.¹²

The participation rate for domestic partner plans tends to be very low. Frequently, the partners of unmarried employees have insurance through their own employers. Sometimes, too, gay and lesbian employees do not want to make their relationships known to others for fear of discrimination or to maintain personal privacy. Perhaps most significantly, pursuant to Internal Revenue Service Rulings, health insurance coverage provided to the unmarried partner of an employee is considered taxable income, which can be a significant expense to the employee. This is discussed further below.¹³

The Tax Consequences of Domestic Partnership Benefits

Unless the employee's partner qualifies as a legal dependent for health insurance purposes, the employee will be taxed on the amount by which the fair market value of the health coverage exceeds the amount, if any, paid by the employee with after-tax dollars for the cost of the coverage.¹⁴ The IRS has spelled out the details of this policy in private letter rulings which should be carefully reviewed by all employers considering implementing a domestic partnership plan. In order to avoid any misunderstandings with employees, most employers include a statement about tax consequences in the affidavit which the employee is asked to sign. In addition, some employers give employees an additional handout relating to tax consequences at the time the employee enrolls in the domestic partnership plan.

Revised March 2008

¹⁰ Stanford Report at 43, 52.

¹¹ Hewitt and Assoc. at 5. See also Lee Badgett, "Equal Pay for Equal Work", 80 Academe 26, 30 (May-June 1994).

¹² Employee Benefit Practices at 4.

¹³ See Laarman at 6. In contrast, health insurance coverage for spouses of employees is not treated as taxable income to the employee. See for example IRS Private Letter Ruling 9603011 (January 1996).

¹⁴ For a discussion of the taxation on domestic partner benefits see the publication, *Unequal Taxes on Equal Benefits*, done by the Williams Institute at http://www.americanprogress.org/issues/2007/12/pdf/domestic_partners.pdf

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**Domestic Partner Benefits
Employer Trends and Benefits Equivalency for the GLBT Family**
By Samir Luther, Workplace Project Manager © 2006

Domestic partner benefits, offered to an employee's unmarried partner, are essential for an employer that wishes to harness the full potential of all employees. As of 2004, the average benefits plan constituted nearly one-fifth of total compensation packages for employees, with roughly half of that devoted to health insurance. For most gay, lesbian, bisexual or transgender employees, the portion of those benefit plans that covers an employee's dependents — traditionally, the employee's spouse and children — is unavailable, creating significant disparity in compensation and the inferred value of that employee's contributions to the company.

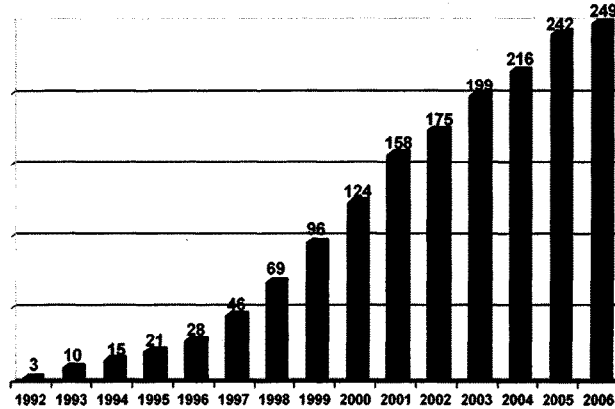
Data from the U.S. Department of Commerce for 2004 shows that employers are devoting a growing share of total annual compensation costs — including wages, salaries and benefits — to benefits plans, health benefits in particular. Wages and salaries now hold just 81 percent of employers' total compensation costs, compared to 95 percent in 1950.¹ As the cost of health insurance continues to rise, benefits are a matter of increasing importance to employees and their families. A total of 31 percent of Americans received employer-provided health insurance as a worker's dependent as of 2003.²

find employers with
domestic partner
health benefits

[www.hrc.org/
workplacedpsearch](http://www.hrc.org/workplacedpsearch)

Meanwhile, the costs of adding domestic partners to the employer's overall benefit package have proven minimal to the employer. A 2005 Hewitt Associates study revealed that the majority of employers experience a total benefits cost increase of less than one percent.³

Figure 1: Domestic Partner Health Benefits — Fortune 500, By Year
Human Rights Campaign Foundation





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The number of employers offering domestic partner benefits, along with the competition for recruiting and retaining talented employees, steadily increased over the last decade, with 49 percent of the Fortune 500 largest corporations offering domestic partner health benefits as of March 1, 2006 (see Figure 1). Employers increasingly look to domestic partner benefits as a means to promote a diverse workforce and ensure maximum employee productivity. The 2005 Hewitt study indicated that the prevailing reason most companies currently offer domestic partner benefits is to attract and retain employees.⁴

Designing a benefits package that appeals to a diverse workforce enables an employer to maintain a recruitment edge and demonstrates that the employer values diversity. Employee morale and productivity have been found to improve in work environments where individuals believe the employer demonstrates that it values its employees.⁵ According to a November 2005 Gallup poll, an employee's satisfaction with his or her employer, willingness to stay with the employer and inclination to recommend the employer to others are all strongly and positively related to the company's diversity policies. In particular, just being aware of a company's diversity policy makes a big difference in levels of satisfaction, retention and loyalty; according to Gallup, "Companies which take the time and effort to develop clear and fair diversity policies benefit both the employees and the company itself."⁶

Finally, the consumer-oriented employer that treats its employees equally stands to gain not just with its own workforce but with the GLBT consumer market, valued at \$641 billion for 2006.⁷ Sixty-nine percent of GLBT people indicated their shopping decisions would be influenced by companies' workplace policies supporting equal and fair treatment of GLBT people.⁸



Prevalence

As of March 1, 2006, 49 percent of the Fortune 500 and 78 percent of the Fortune 100 largest corporations offered health benefits to employees' domestic partners, compared to just 25 percent of the Fortune 500 in 2000. The Human Rights Campaign Foundation's complete list of employers that offer domestic partner health benefits is available online — at www.hrc.org/workplace/dpbsearch — and is continually updated.

In addition to the HRC Foundation's annual *State of the Workplace* report, statistics on the prevalence of domestic partner benefits are available from Business & Legal Reports, Hewitt Associates, Kaiser Family Foundation, Mellon HRIS and the Society for Human Resource Management. Some of this data has been provided in aggregate form in Table 1 below; please refer to the original reports for more detailed information.

Although the studies are distinct in terms of their size and composition between small, medium and large businesses, their results are clear: regardless of business size, the trend toward domestic partner benefits is increasing, with substantial gains among the largest employers.

Table 1. Availability of Domestic Partner Benefits — 1997-2005

Name of Survey	Hewitt Benefits Programs for Domestic Partners	2005 SHRM Benefits Survey	BLR's 2005 Survey of Employee Benefits	Mellon Non-traditional Family Benefit Coverage Survey	2004 SHRM Benefits Survey	Kaiser Family Foundation 2004 Health Benefits Survey	SHRM Domestic Partner Benefits Mini-Survey
Month, Year	Jun-05	Jun-05	Jan-05	Aug-04	Jun-04	2004	Jan-97
% Availability All Employers	56% ^a	32% ^b	19% ^c	31% ^d	27% ^e	14% ^f	7% ^g
% Availability Lg. Employers	n/a	44%	n/a	34%	36%	15%	n/a
% Availability Med. Employers	n/a	30%	n/a	26%	25%	n/a	n/a
% Availability Sm. Employers	n/a	21%	n/a	18%	22%	14%	n/a

Survey Composition: Number of employers surveyed, percentage of large employers (1,000-plus employees), medium employers (100-999 employees) and small employers (1-99 employees).

^a This study was composed primarily of large employers. 281 employers surveyed: 89% large employers and 11% medium or small employers.

^b 363 employers surveyed: 35% large employers, 39% medium employers and 26% small employers.

^c 3,000-plus employers surveyed. A breakdown of this survey's employer size was not available.

^d This study was composed primarily of large employers. 568 employers surveyed: 70% large employers, 21% medium employers and 8% small employers.

^e 459 employers surveyed: 19% large employers, 43% medium employers and 34% small employers.

^f 1,378 employers surveyed. A breakdown of this survey's employer size was not available.

^g 777 employers surveyed. A breakdown of this survey's employer size was not available.



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Legal Requirements

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Today's federal non-discrimination laws do not include "sexual orientation" or "gender identity or expression." However, a growing number of states are revising their state non-discrimination laws for private employment to include either or both terms. As of March 1, 2006, 17 states and the District of Columbia prohibit discrimination on the basis of sexual orientation; seven states and the District of Columbia prohibit discrimination on the basis of gender identity and/or expression. Also, many states prohibit employers from discriminating against employees based on marital status. These laws have no explicit requirements regarding benefits plans for same-sex couples.



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Despite the federal Defense of Marriage Act and similar laws at the state level, there is no legislation or legal precedent that prohibits private employers from providing domestic partner benefits to employees.

Federal Requirements

As a general rule, existing legislation surrounding benefits (e.g.: the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Family and Medical Leave Act) should be considered legal floors; for example, employers have the option of extending COBRA and FMLA benefits to include an employee's same-sex partner, even though they may not be required to do so.

State Requirements

Employers whose operations reside entirely within one state typically must ensure compliance with that state's same-sex partner recognition and benefits regulations, to the extent that they exist. See Table 2 on page 5 for the current list of states with legal same-sex relationship recognition. Again, there are currently no regulations at the state level that prohibit private employers from recognizing an employee's same-sex partner for the purpose of compensation in the form of benefits.

Those insured plans that are subject to Massachusetts insurance regulations must cover same-sex spouses on the same terms that they cover opposite-sex spouses. Although employers with federally regulated health plans have discretion as to whether or not to provide health benefits to state-recognized same-sex relationships, most employers in Massachusetts have extended benefits to married same-sex couples.



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Please refer to Gay & Lesbian Advocates & Defenders' website — www.glad.org/rights/HealthBenefitsAfterGoodridge.html — for more information particular to same-sex marriage in Massachusetts.

Employers nationwide are now faced with questions from employees who have married in Massachusetts or in other countries about eligibility for full spousal benefits. Those that have already implemented domestic partner benefits programs are prepared for many of the contingencies that a state's recognition of same-sex relationships raises. Forward-looking employers acknowledge that the recognition of committed same-sex relationships on par with opposite-sex married relationships across the United States is better for business, particularly as employees are asked to move from one state to another. Employers will face challenges when attempting to relocate employees from a state with same-sex partner recognition to a state that actively limits the legal status of same-sex partners.

Table 2. States with Same-Sex Relationship Recognition

California	Effective Jan. 1, 2005, the state's domestic partner registry was expanded to confer almost all of the state-level spousal rights and responsibilities on registered couples.
Connecticut	Effective Oct. 1, 2005, same-sex couples in Connecticut may enter into civil unions with almost all the benefits of marriage under state law.
District of Columbia	Effective July 8, 2002, registered domestic partners are entitled to the same rights as legal family members to visit their domestic partners in the hospital and make decisions concerning the treatment of a domestic partner's remains after the partner's death. In 2004, the law was enhanced to allow registered domestic partners to add each other to a real estate deed without paying recording taxes.
Hawaii	Effective July 8, 1997, the state offers "reciprocal beneficiary" status to same-sex couples, with limited benefits relative to married couples in Hawaii. Afforded benefits include certain rights and obligations associated with survivorship, inheritance, property ownership and insurance.
Maine	Effective July 30, 2004, a state domestic partner registry provides registered couples with inheritance rights, next-of-kin status, victim's compensation and priority in guardian and conservator rights.
Massachusetts	Effective May 17, 2004, the state offers civil marriage licenses to same-sex couples.
New Jersey	Effective July 11, 2004, the state offers "domestic partner" status to same-sex and some opposite-sex couples. The status allows the partner to be treated as a dependent for the purposes of administering certain retirement and health benefits.
Vermont	Effective July 1, 2000, same-sex couples in Vermont may enter into civil unions that entitle the couples to the more than 300 state-level rights and responsibilities extended to opposite-sex spouses.



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Equal Benefits Ordinances

As of March 1, 2006, 11 cities and the state of California have enacted an “equal benefits ordinance” that requires contractors with the government entity to extend benefits to same-sex domestic partners. To comply with such a law, a contractor that offers health insurance and other benefits to employees’ spouses must offer equivalent coverage to an employee’s domestic partner. Similar laws surrounding bidding preference or fund disbursement have been passed in four other cities. For more information on equal benefits ordinances, refer to the HRC Foundation website — at www.hrc.org/workplace/ebo.

- [California](#) (effective Jan. 1, 2007)
- [Berkeley, Calif.](#)
- [Los Angeles, Calif.](#)
- [Oakland, Calif.](#)
- [San Francisco, Calif.](#)
- [San Mateo County, Calif.](#)
- [Miami Beach, Fla.](#)
- [Minneapolis, Minn.](#)
- [King County, Wash.](#)
- [Olympia, Wash.](#)
- [Seattle, Wash.](#)
- [Tumwater, Wash.](#)

Costs and Rates of Enrollment

The foremost concerns surrounding the extension of health benefits to domestic partners focus on the particular costs related to same-sex couple health coverage and the rates of enrollment.

A 2005 Hewitt Associates study revealed that the majority of employers — 64 percent — experience a total financial impact of less than 1 percent of total benefits cost, while only 5 percent of employers experience financial impacts of 3 percent or greater of total benefits cost.⁹

Furthermore, according to the Society for Human Resource Management, employers that have offered domestic partner benefits report that coverage for domestic partners is no more expensive than coverage for other dependents. Although some people assume that HIV/AIDS will increase the number of catastrophic claims, those diagnoses have proven similar in cost and incident rate to most other life-threatening illnesses such as cancer and heart disease.¹⁰

A 1997 Hewitt Associates study revealed that the impact on companies’ costs “has been minimal, with the addition of domestic partners, regardless of whether coverage was extended to same-sex or opposite-sex domestic partners. Companies report increases in medical claims of less than 1 percent after domestic partner coverage was introduced.”¹¹ A 2000 Hewitt Associates survey confirmed that adding health benefits for domestic partners is no more expensive than insuring spouses.

Similarly, rates of enrollment have not been particularly high. Possible explanations most commonly cited for this are that same-sex domestic partners are likely already covered by their own employer, or that the employee is simply unwilling to disclose their sexual orientation for fear of discrimination.



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Tax Implications

The information in this document does not constitute legal advice. For assistance with legal questions specific to your situation, please consult an attorney.

Although the Internal Revenue Service has determined that a domestic partner is not considered a “spouse” under federal tax law, in certain circumstances, domestic partners may be able to qualify as a “dependent” under the definition of a “qualifying relative” of Code § 152 for purposes of receiving tax-free employer-provided health plan coverage. To qualify as a “dependent,” the domestic partner must (1) have the same principal address as the employee/taxpayer for the year and be a member of the employee/taxpayer’s household; and (2) receive from the employee/taxpayer more than half of his or her individual support for the year. Significantly, a domestic partner or a partner’s child need not also be claimed by the employee/taxpayer as a “dependent” on the employee/taxpayer’s federal tax return to be eligible for tax-free health coverage.

For a domestic partner and the partner’s children that do not qualify as dependents under Code § 152, employers must report the fair market value of their health plan coverage — typically the portion of the premiums paid by the employer attributable to insurance coverage for the partner or partner’s children — as imputed income for the employee for tax purposes, thereby raising both the employee’s taxable gross income and the employer’s payroll taxes. Furthermore, payroll deductions to cover a non-qualifying domestic partner and the partner’s children must also be taken on an after-tax basis.

State recognition of same-sex relationships may provide opportunities for tax relief for purposes within that state.

Legislation was introduced in the 108th and 109th sessions of Congress to remove the federal tax burden on both employees and employers with respect to domestic partner health coverage. Employers interested in supporting the Domestic Partner Health Benefits Equity Act and joining the Business Coalition for Benefits Tax Equity should refer to the HRC website — at www.hrc.org/legislation.

Flexible Spending Accounts. Presently, medical expenses incurred by or on behalf of domestic partners (and their children) that are not qualifying dependents under Code § 152 are not eligible for tax-free reimbursement from an FSA.

Health Savings Accounts. As with an FSA, medical expenses incurred by or on behalf of domestic partners (and their children) that are not qualifying dependents under Code § 152 are not eligible for tax-free reimbursement from an HSA. Questions surrounding HSAs as they relate to domestic partners are complex and should be referred to an attorney.

Grossing Up. An increasing number of employers account for existing federal and state tax inequities by “grossing up” an employee’s salary to cover the cost of



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additional taxes from the imputed income of domestic partner benefits. As of March 1, 2006, 18 companies have informed the HRC Foundation that they offer this benefit to employees. They are:

- [Alston & Bird LLP](#)
- [The Boeing Co.](#)
- [Bright Horizons Family Solutions Inc.](#)
- [The Coca-Cola Company](#)
- [Eli Lilly & Co.](#)
- [General Electric Co.](#)
- [Keyspan Corp.](#)
- [Kimpton Hotel & Restaurant Group Inc.](#)
- [Levi Strauss & Co.](#)
- [MasterCard Inc.](#)
- [MeadWestvaco Corp.](#)
- [Merck & Co. Inc.](#)
- [PacifiCorp](#)
- [Provident Financial Corp.](#)
- [Southwest Airlines Co.](#)
- [UnumProvident Corp.](#)
- [Waste Management Inc.](#)
- [Worldspan Technologies Inc.](#)

Soft Benefits

Employers are generally free to extend most benefits to employees' domestic partners, such as expanding family and medical leave to care for a domestic partner or expanding bereavement leave so it can be taken in the event of a domestic partner's death.

An employer that implements a domestic partner benefits program should, in the spirit of equal compensation and fairness, and with the goal of motivating and retaining employees, evaluate the entire benefits package for consistent treatment between spouses and domestic partners and/or a domestic partner's dependents. This review may also include corporate culture and climate practices relating to an employee's family, such as invitations to corporate events or access to corporate facilities for family members, if applicable.

The HRC Foundation tracks employers that provide domestic partner-inclusive FMLA-like benefits, COBRA-like benefits continuation, bereavement leave on behalf of the spouse/partner, employer-provided supplemental life insurance for the spouse/partner, relocation and travel assistance, adoption assistance, qualified joint and survivor annuity for spouse/partner, qualified pre-retirement survivor annuity for spouse/partner, retiree healthcare benefits and employee discounts. As of March 1, 2006, the HRC Foundation was aware of 216 large employers that extended FMLA benefits to include leave on behalf of a same-sex partner and 232 large employers that offered COBRA-like benefits for an employee's same-sex partner.

Suggested language for these policies can be found on the HRC Foundation website — at www.hrc.org/workplace — and on the Society for Human Resource Management website — at www.shrm.org.

For more information on spousal equivalency, refer to the HRC Foundation website — at www.hrc.org/workplace/dpb.



Benefits Eligibility and Best Practices

The decision of whether to include same-sex partners or same- and opposite-sex partners in a domestic partner benefits program is up to the employer. Many employers have chosen to include both on the grounds of not discriminating on the basis of sexual orientation, while others have opted to only include same-sex partners due to the fact that they are precluded from obtaining the rights and responsibilities of civil marriage.

In the absence of a state or local registration of a domestic partnership or other legal status, some employers require that a notarized domestic partnership affidavit be submitted before making changes to an employee's benefits enrollment. While a January 2005 Business & Legal Reports study found that the number of employers utilizing domestic partnership affidavits is in overall decline, many employers still use them.¹² Most employers do not require documentation indicating the establishment of a civil opposite-sex marriage. Care should be taken to treat all employees the same way when asking for proof of relationships.

Common stipulations for the persons establishing a domestic partnership, in the absence of a state or local registration of a domestic partnership, include that the individuals:

- Be 18 or older
- Be unmarried
- Not be related to each other
- Have an intimate, committed relationship of mutual caring of at least six months' duration
- Live together
- Not currently have a different domestic partner or spouse
- Agree to mutual fiscal and legal responsibility for each other

While some employers elect for a longer minimum period of time residing together, a period longer than 12 months is considered an unnecessary hardship imposed on the employee, particularly given the absence of similar standards for opposite-sex spouses. The 2005 Hewitt Associates study found that 52 percent of companies require a period of one year, while 44 percent require a period of six months.¹³

Eligible Dependents and Beneficiaries. Employers that recognize an employee's domestic partner for benefits purposes should ensure that the domestic partner's children are covered as eligible dependents when possible. Employers should also ensure that their policies surrounding beneficiaries include domestic partners when possible.

Finding a Carrier

Insurance plans provided through a third party must be approved by the appropriate regulatory body within the state where the insurance policy is issued.



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The San Francisco Human Rights Commission maintains a state-by-state database of insurance carriers that provide plans inclusive of same-sex partners on its website — at mission.sfgov.org/hrcdip — that covers the typical range of employer-provided insurance options.

Employers that have difficulty finding reasonable coverage in one state may be able to utilize operations in a different state in order to obtain coverage.

Union Employees

Employers negotiating a union contract should ensure that the contract language includes domestic partner benefits. Pride at Work, the GLBT constituency group of the AFL-CIO, provides resources for sample contract language on its website — at www.prideatwork.org (paid registration is required).

Non-Profit Organizations

The HRC Foundation has tracked 129 not-for-profit institutions that provide same-sex partner health benefits, including AARP, the American Medical Association, the Brookings Institution, Pew Charitable Trusts and the World Bank Group. The complete list is available on HRC's website — at www.hrc.org/employersearch.

Announcing Domestic Partner Benefits to Your Organization

When announcing benefits for domestic partners, it is important to state clearly that the policies are designed to foster an atmosphere of fairness and professional respect at work, and not to change personal values. Domestic partner benefits are a business imperative, a tool for attracting and keeping the best employees and a means of improving employee productivity. If a GLBT employee resource or affinity group exists at your organization, make sure to utilize the group to inform your employees that the benefits exist.

Be straightforward about the tax implications so as to avoid confusion, and if there are any major discrepancies in benefits between opposite-sex spouses and same-sex partners, be clear about why the disparity exists and how that might change in the future. The most important aspect of this process is for the employee to feel valued and that they can trust that the employer will do the right thing.



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For more information contact:
Workplace Project
Human Rights Campaign Foundation
1640 Rhode Island Ave NW
Washington, DC 20036

202/628-4160
TTY: 202/216-1572
workplace@hrc.org
<http://www.hrc.org/workplace>

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- ⁵ "Fundamentals of Employee Benefit Programs, Part Four: Other Benefits," Employee Benefit Research Institute, 2005. Available at <http://www.ebri.org/pdf/publications/books/fundamentals/End05.Prt04.Chp38.pdf>.
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HEALTH RESEARCH AND
EDUCATIONAL TRUST

Employer Health Benefits

2007
ANNUAL SURVEY



-and-



SUMMARY OF FINDINGS

AS THE LEADING SOURCE OF HEALTH INSURANCE, EMPLOYER-SPONSORED INSURANCE COVERS ABOUT 158 MILLION NONELDERLY PEOPLE IN AMERICA.¹ TO PROVIDE CURRENT INFORMATION ABOUT THE NATURE OF EMPLOYER-SPONSORED HEALTH BENEFITS, THE KAISER FAMILY FOUNDATION (KAISER) AND THE HEALTH RESEARCH AND EDUCATIONAL TRUST (HRET) CONDUCT AN ANNUAL NATIONAL SURVEY OF PRIVATE AND PUBLIC EMPLOYERS OF THREE OR MORE WORKERS.

The key findings from the 2007 survey include the fourth consecutive year of a lower rate of growth for health insurance premiums, the lowest since 1999. However, as in prior years, the average premium increase continues to outpace workers' earnings and inflation. The types of plans in which workers enroll are similar to last year. The percentage of employers sponsoring insurance remains stable, with no significant increase in the percentage of employers offering high-deductible health plans with a savings option (HDHP/SO).

The 2007 survey repeated the detailed questions regarding deductibles and out-of-pocket maximum amounts that were introduced in the 2006 survey and expanded the number of questions on office-visit and other types of cost sharing.

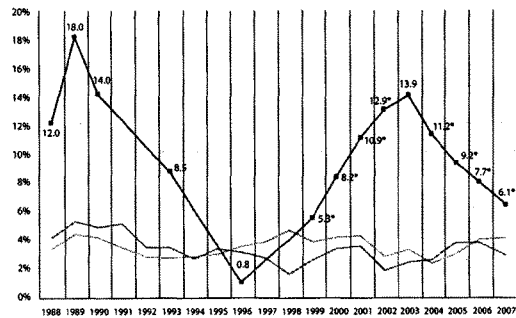
HEALTH INSURANCE PREMIUMS

Between spring of 2006 and spring 2007, premiums increased an average of 6.1% for employer-sponsored health insurance, a slower rate than the 7.7% increase in 2006 (Exhibit A).² This is the fourth consecutive year with a lower rate of growth than the previous year, and the lowest rate of growth since 1999, when premiums increased 5.3%. Even as premium growth moderates, the rate of increase continues to be higher than the growth in workers' earnings (3.7%) and inflation (2.6%).

While the average premium increase is 6.1% in 2007, 10% of covered workers are employed by firms that experienced premium increases of greater than 15%, and 46% are in firms with premium

EXHIBIT A

Increases in Health Insurance Premiums Compared to Other Indicators, 1988-2007



Year	Health Insurance Premiums	Overall Inflation	Workers' Earnings
1988	12.0	3.9	3.1
1989	18.0	5.1	4.2
1990	14.0	4.7	3.9
1991	8.5	3.2	2.5
1992	8.5	2.9	3.3
1993	5.3*	2.3	3.6
1994	8.2*	2.3	4.0
1995	8.2*	3.1	4.0
1996	10.9*	1.6	2.6
1997	12.9*	2.2	3.0
1998	13.9	2.3	2.1
1999	11.2*	2.3	2.7
2000	9.2*	3.5	3.8
2001	8.2*	3.5	3.7
2002	10.9*	2.6	
2003	13.9	2.6	
2004	11.2*		
2005	9.5*		
2006	7.7*		
2007	6.1*		

*Estimate is statistically different from estimate for the previous year shown (p<.05). No statistical tests are conducted for years prior to 1999.

Note: Data on premium increases reflect the cost of health insurance premiums for a family of four. The average premium increase is weighted by covered workers.

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2007; KPMG Survey of Employer-Sponsored Health Benefits, 1992, 1996; The Health Insurance Association of America (HIAA), 1988, 1989, 1990; Bureau of Labor Statistics, Consumer Price Index, U.S. City Average of Annual Inflation (April to April), 1988-2007; Bureau of Labor Statistics, Seasonally Adjusted Data from the Current Employment Statistics Survey, 1988-2007 (April to April).

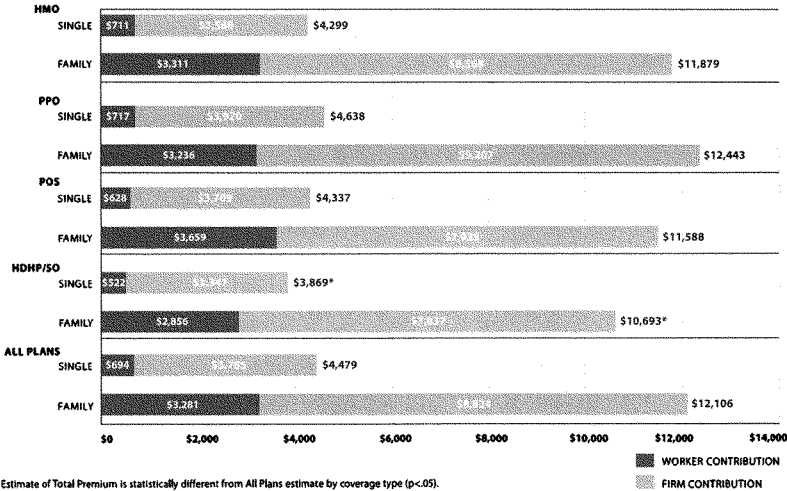
increases of 5% or less. The rate of growth was similar for small firms (3-199 workers) and large firms (200 or more workers) and for fully insured and self-funded plans.

The average annual total premium cost is \$4,479 for single coverage and \$12,106 for family coverage (Exhibit B). Average

premiums for single and family coverage are similar for small firms (3-199 workers) and large firms (200 or more workers). Average premiums for HDHP/SOs are lower than the overall average for all plan types for both single and family coverage (this premium amount does not include any employer contributions to savings account options).

EXHIBIT B

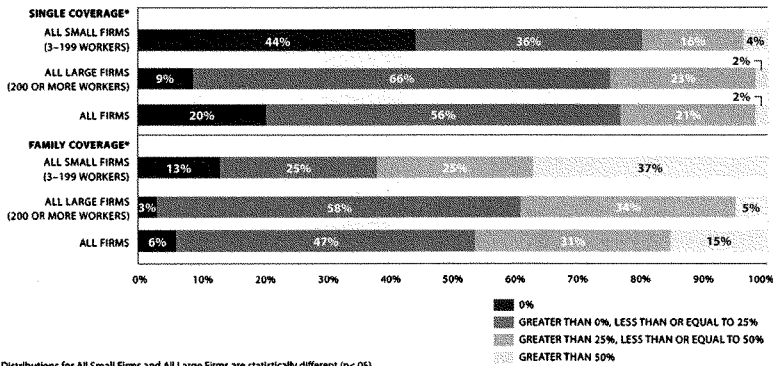
Average Annual Firm and Worker Premium Contributions and Total Premiums for Covered Workers for Single and Family Coverage, by Plan Type, 2007



* Estimate of Total Premium is statistically different from All Plans estimate by coverage type (p<.05).
Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2007.

EXHIBIT C

Distribution of Percentage of Premium Paid by Covered Workers for Single and Family Coverage, by Firm Size, 2007



* Distributions for All Small Firms and All Large Firms are statistically different (p<.05).
Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2007.



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About 80% of workers with single coverage and 94% of workers with family coverage contribute to the total premium for their coverage. The average annual worker contributions for single and family coverage are \$694 and \$3,231, respectively, and are significantly higher than the amounts reported in 2006. For single coverage, workers in small firms (3–199 workers) contribute less on average than workers in large firms (200 or more workers) (\$561 vs. \$759).

This trend reverses for family coverage, where workers in small firms contribute significantly more than workers in large firms (\$4,236 vs. \$2,831). While the dollar amounts are increasing, the share of the premium paid by covered workers remains stable. In 2007, the average percentage of the premium paid by covered workers is 16% for single coverage and 28% for family coverage, similar to the percentages reported for the last several years. However, for single coverage, over one-fifth of workers pay greater than 25% of the total premium while another fifth pay no contribution. For family coverage, 47% pay greater than 25% of the total premium and only 6% have no contribution (Exhibit C).

The majority (57%) of covered workers are enrolled in preferred provider organizations

(PPOs). Health maintenance organizations (HMOs) cover 21%, followed by point-of-service (POS) plans (13%), HDHP/SOs (5%), and conventional plans (3%).

EMPLOYEE COST SHARING

In addition to their premium contributions, most covered workers face additional payments when they use health care services. In PPOs, 71% of covered workers with single coverage have a general annual deductible that they pay before coverage for most services begins. Almost half (48%) of workers in POS plans and about 18% of workers in HMOs face a general annual deductible for single coverage. Many workers with no deductible have other forms of cost sharing for office visits or other services.

The average general annual deductibles (for workers with a deductible) for single coverage are \$461 for workers in PPOs, \$401 for workers in HMOs, \$621 for workers in POS plans, and \$1,729 for workers in HDHP/SOs (who by definition have high deductibles). Like last year, workers in small firms (3–199 workers) face higher deductibles than workers in large firms (200 or more workers) for PPOs, POS plans, and HDHP/SOs.³ However, some plans cover certain services before the deductible

is met. For example, 66% of covered workers with a general annual deductible enrolled in PPOs, the most common plan type, do not have to meet the deductible before preventive care is covered.

In addition to any general plan deductible, over 95% of covered workers face cost sharing when admitted to the hospital or when they have outpatient surgery. Cost sharing may include a separate hospital deductible, copayment, coinsurance, or a per diem charge. About 12% of workers in PPOs, 15% of workers in HMOs, and 23% of workers in POS plans have a separate hospital deductible. The average hospital deductibles are similar across plan types (\$334 for PPOs, \$323 for HMOs, and \$340 for POS plans). Forty-three percent of covered workers have coinsurance for hospital admissions in addition to any deductible with an average coinsurance rate of 17%. A smaller percentage of workers (20%) have a copayment, which averages \$208.

Most workers face some form of cost sharing when visiting the emergency room, for urgent care, or for an advanced diagnostic test. For example, 86% of covered workers have cost sharing for urgent care visits. Similarly, almost all covered workers (93%) have cost sharing

EXHIBIT D

Percentage of Firms Offering Health Benefits, by Firm Size, 1999–2007*

FIRM SIZE	1999	2000	2001	2002	2003	2004	2005	2006	2007
3–9 Workers	56%	57%	58%	58%	55%	52%	47%	48%	45%
All Small Firms (3–199 Workers)	65%	68%	68%	66%	65%	63%	59%	60%	59%
All Large Firms (200 or More Workers)	99%	99%	99%	98%	98%	99%	98%	98%	99%
ALL FIRMS	66%	69%	68%	66%	66%	63%	60%	61%	60%

*Tests found no statistical difference from estimate for the previous year shown (p<.05).

Note: As noted in the Survey Design and Methods section, estimates presented in this exhibit are based on the sample of both firms that completed the entire survey and those that answered just one question about whether they offer health benefits.

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999–2007.

for emergency room visits, but 79% of workers with emergency room cost sharing are in plans where the cost sharing is waived if the individual is admitted to the hospital.

The majority of workers have copayments or coinsurance for physician office visits. Among the 79% of workers with copayments for in-network office visits, 75% have a copayment of \$15, \$20, or \$25 per visit with a primary care physician. Workers in HDHP/SOs are more likely to have coinsurance than workers with other plan types and are also more likely to have no cost sharing once the deductible has been met. Workers that see out-of-network physicians are more likely to pay coinsurance (80%) rather than copayments (9%).

As with physician office visits, most covered workers face copayments or coinsurance for prescription drugs. About three in four covered workers are in plans with three or four-tier cost-sharing arrangements, and most face copayments rather than coinsurance for the first three tiers. For workers in plans with a fourth tier, the percentages of covered workers facing copayments and coinsurance are roughly comparable. Among workers with three or four-tier

plans, the average copayments are \$11 for generic drugs, \$25 for preferred drugs, and \$43 for nonpreferred drugs. The average copayment for fourth-tier drugs is \$71 and the average coinsurance is 36%.⁴ Covered workers in HDHP/SOs are less likely to be in plans with three or four-tier cost sharing. In contrast, they are more likely to be in plans where there is no cost sharing after the deductible is met and in plans where the payment is the same regardless of the type of drug, where they are also more likely to face coinsurance than workers in HMOs or PPOs.⁵

Most covered workers are in a plan that partially or totally limits the cost sharing that a worker must pay under their health plan in a year, generally referred to as an out-of-pocket maximum. Seventy-one percent of workers with single or family coverage have an out-of-pocket maximum, down from 79% (for single coverage and 78% for family coverage in 2006). However, it should be noted that some workers with no out-of-pocket limit may have low cost sharing.⁶ Out-of-pocket limits vary considerably; for example, among covered workers in plans that have an out-of-pocket limit for single coverage, 22% are in plans

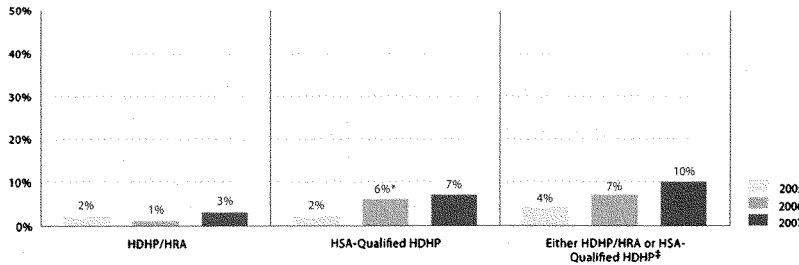
with an annual out-of-pocket maximum of \$3,000 or more, while 28% are in plans with out-of-pocket maximum of less than \$1,500. For family coverage, 24% of workers are in plans with an out-of-pocket maximum of \$6,000 or more and 10% are in plans with a limit of less than \$2,000.⁷ However, not all spending counts towards the out-of-pocket limit. For example, among workers in PPOs, 73% are in plans that do not count office-visit copayments and 32% are in plans that do not count spending for the general annual deductible when determining if an enrollee has reached his or her out-of-pocket maximum.

AVAILABILITY OF EMPLOYER-SPONSORED COVERAGE

Sixty percent of employers offer health benefits in 2007, similar to the 61% offer rate reported in 2006 but lower than the 69% offer rate in 2000. The drop in the overall offer rate is driven by the declining percentage of small firms (3-199 workers) that offer coverage. Among firms with 3 to 9 workers, the offer rate has dropped from 57% in 2000 to 45% in 2007. Over this same time period, the offer rate has remained stable for firms with 200 or more workers at 98% or 99% (Exhibit D).

EXHIBIT E

Among Firms Offering Health Benefits, Percentage That Offer an HDHP/HRA and/or an HSA-Qualified HDHP, 2005-2007



* Estimate is statistically different from estimate for the previous year shown (p<.05).

[†] The 2007 estimate includes 0.2% of all firms offering health benefits that offer both an HDHP/HRA and an HSA-qualified HDHP. The comparable percentages for 2005 and 2006 are 0.3% and 0.4%, respectively.

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2005-2007.



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The percentage of firms offering coverage increases as the size of the firm increases. As previously mentioned, the smallest firms (3-9 workers) remain least likely to offer health benefits at 45%. Among firms with 10 to 24 workers, the percentage jumps to 76%, and among firms with 25 to 49 workers it increases to 83%. Over 95% of firms with 50 or more employees offer health insurance.

As we have seen in past years, the offer rate is higher for firms with at least some union workers (99%) compared to firms with no union workers (57%). Firms with a lower proportion of lower-wage workers (less than 35% of workers earn \$21,000 or less annually) are also more likely to offer benefits compared to firms with a higher proportion of lower-wage employees (35% or more earn \$21,000 or less annually) (67% vs. 36%).

Even in firms that offer coverage, not all workers are covered. Some workers are not eligible to enroll as a result of waiting periods or minimum work-hour rules, and others choose not to enroll, perhaps because they must pay a share of the premium or can get coverage through a spouse. Among firms that offer coverage, an average of 79% of workers are eligible for the health benefits offered by their

employer. Of those eligible, 82% take up coverage, resulting in 65% of workers in firms offering health benefits having coverage through their employer. Among both firms that offer and do not offer health benefits, 59% of workers are covered by health plans offered by their employer.

This year, the survey asked employers that offer health insurance if they offer health benefits to domestic partners. Thirty-seven percent offer health benefits to same-sex domestic partners and 47% of firms offer health benefits to opposite-sex domestic partners. These percentages are considerably higher than those we reported in 2004 (14% for same-sex domestic partners and 12% for opposite-sex domestic partners), but a change in the way the question was asked may account for some or all of the difference.⁸

HIGH-Deductible Health Plans with Savings Option

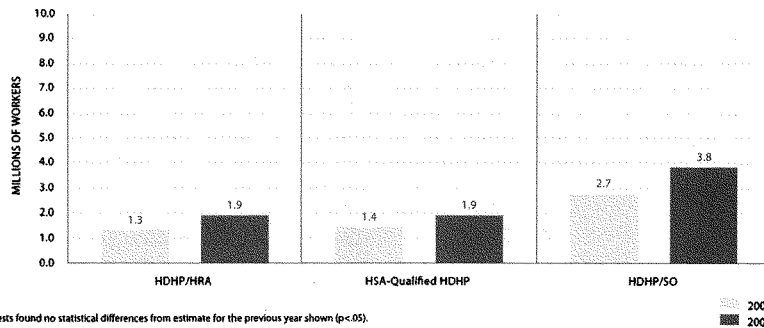
Last year was the first year information on high-deductible health plans with a savings option (HDHP/SO) was collected as a separate plan type. HDHP/SOs include (1) health plans with a deductible of at least \$1,000 for single coverage and

\$2,000 for family coverage offered with an Health Reimbursement Arrangement (HRA), referred to as "HDHP/HRAs," and (2) high-deductible health plans that meet the federal legal requirements to permit an enrollee to establish and contribute to a Health Savings Account (HSA), referred to as "HSA-qualified HDHPs."

Ten percent of firms offering health benefits offer an HDHP/SO in 2007, but the difference from the 7% reported in 2006 is not statistically significant. Firms with 1,000 or more workers are more likely to offer HDHP/SOs (18%) than firms with 3 to 999 workers (10%). Among firms offering health benefits, 3% offer an HDHP/HRA and 7% offer an HSA-qualified HDHP; neither estimate is a significant increase from the percentages reported in 2006 (Exhibit E). About 3.8 million (5%) covered workers are enrolled in HDHP/SOs, with about 1.9 million (3%) covered workers enrolled in each type of HDHP/SO (Exhibit F).

Annual deductibles for single coverage for HDHP/HRAs and HSA-qualified HDHPs average \$1,556 and \$1,923, respectively. However, these deductibles vary considerably; for example, 24% of workers enrolled in an HSA-qualified HDHP

EXHIBIT F
Number of Covered Workers Enrolled in HDHP/SOs, 2006-2007*



*Tests found no statistical differences from estimate for the previous year shown (p<.05).
Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2006-2007.

for single coverage have a deductible between \$1,100 and \$1,499, while 54% have a deductible of \$2,000 or more. The average aggregate annual deductible for family coverage for HDHP/HRAs is \$3,342 and \$3,883 for HSA-qualified HDHPs. Some HDHP/SOs cover preventive services before the deductible is met: 88% of workers in HDHP/HRAs and 86% of workers in HSA-qualified HDHPs have preventive benefits covered before having to meet the deductible.

Average total premiums for HDHP/SOs are lower than the average premium for workers in plans that are not HDHP/SOs for both single and family coverage (Exhibit G). The average worker premium contribution for HDHP/SO coverage is lower than the average worker premium contribution for single coverage for workers not in HDHP/SOs.

The distinguishing aspect of these high deductible plans is the savings feature available to employees. Workers enrolled in an HDHP/HRA receive an average annual contribution from their

employer of \$915 for single coverage and \$1,800 for family coverage (Exhibit H). The average contributions to HSAs are \$428 for single coverage and \$714 for family coverage. However, among firms offering an HSA-qualified HDHP, about two-thirds of firms do not make a contribution to the HSA for single coverage (covering 47% of workers in these plans) and 47% of firms do not make a contribution to the HSA for family coverage (covering 45% of workers with these plans). If workers with no employer contribution to their HSA are excluded from the calculation the average annual employer HSA contributions are \$806 and \$1,294 for single and family coverage, respectively.

RETIREE COVERAGE

The percentage of large firms (200 or more workers) offering retiree health benefits in 2007 is 33%, similar to the 2006 offer rate of 35%. Among large firms (200 or more workers) that offer retiree health benefits, 92% offer health

benefits to early retirees and 71% offer health benefits to Medicare-age retirees. These percentages are similar to the percentages reported in 2006.

UTILIZATION MANAGEMENT

The survey periodically asks about the utilization management provisions of the firm's plan with the largest enrollment. In 2007, about two-thirds of firms report that their health plan with the largest enrollment requires pre-admission certification for inpatient hospital care. About 55% report that the plan requires pre-admission certification for outpatient surgery, and 48% state that the plan includes case management for large claims.

OTHER BENEFITS

Section 125 of the Internal Revenue Service Code permits employers to establish programs that allow employees to make contributions towards the cost of health insurance and to pay for health

EXHIBIT G

Average Annual Premiums, Worker and Firm Contributions for Covered Workers in HDHP/SOs and All Other Non-HDHP/SO Plans, 2007

	All Other Non-HDHP/SO Plans [†]		HDHP/SO	
	Single	Family	Single	Family
Worker Contribution to Premium	\$704*	\$3,304	\$522*	\$2,856
Firm Contribution to Premium	\$3,810*	\$8,879*	\$3,347*	\$7,837*
Total Annual Premium	\$4,514*	\$12,183*	\$3,869*	\$10,693*
Annual Firm Contribution to the HRA or HSA	NA	NA	\$682	\$1,298
Total Annual Spending (Total Premium Plus Firm Contribution to HRA or HSA)	\$4,514	\$12,183	\$4,550	\$11,991

* Estimate for All Other Non-HDHP/SO Plans is statistically different from estimate for HDHP/SOs (p<.05).

NA: Not Applicable.

[†] In order to compare spending for HDHP/SOs to all other plans that are not HDHP/SOs, we created composite variables excluding HDHP/SO data.

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2007.



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EXHIBIT H

Average Annual Premiums and Contributions to Spending Accounts for Covered Workers, HDHP/HRA and HSA-Qualified HDHP, 2007

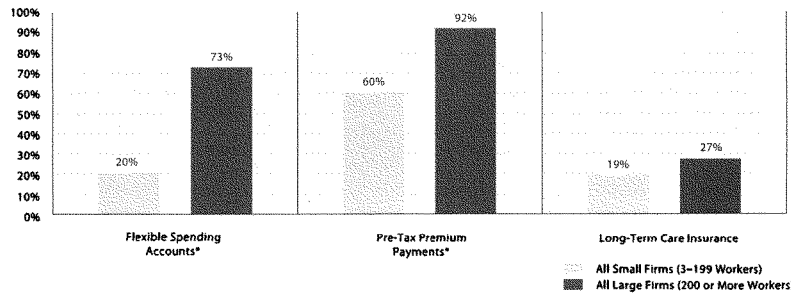
	HDHP/HRA		HSA-Qualified HDHP	
	Single	Family	Single	Family
Total Annual Premium	\$3,894	\$11,492	\$3,826	\$9,666
Worker Contribution to Premium	\$617	\$3,113	\$413	\$2,564
Firm Contribution to Premium	\$3,277	\$8,379	\$3,412	\$7,102
Annual Firm Contribution to the HRA or HSA[‡]	\$915	\$1,800	\$428	\$714
Total Annual Firm Contribution (Firm Share of Premium Plus Firm Contribution to HRA or HSA)	\$4,192	\$10,179	\$3,840	\$7,815
Total Annual Spending (Total Premium Plus Firm Contribution to HRA or HSA)	\$4,809	\$13,292	\$4,254	\$10,380

[‡] When those firms that do not contribute to the HSA (66% for single coverage and 47% for family coverage) are excluded from the calculation, the average firm contribution to the HSA for covered workers is \$806 for single coverage and \$1,294 for family coverage.

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2007.

EXHIBIT I

Among Firms Offering Health Benefits, Percentage of Firms Offering Flexible Spending Accounts, Pre-Tax Premium Payments, and Long-Term Care Insurance, By Firm Size, 2007



*Estimates are statistically different between All Small Firms and All Large Firms within category (p<.05).

Note: Section 125 of the Internal Revenue Service Code permits employees to pay for health insurance premiums with pre-tax dollars and also allows the establishment of flexible spending accounts (FSAs).

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2007.

are services with pre-tax dollars through flexible spending account.⁹ Sixty-one percent of firms that offer health benefits allow employees to use pre-tax dollars to pay for health insurance premiums. Large firms (200 or more workers) are more likely to offer this benefit than small firms (3-199 workers) (92% vs.

60%). A smaller percentage (22%) of offering firms offer a flexible spending account, but again, large firms (200 or more workers) are more likely to offer this benefit than small firms (3-199 workers) (73% vs. 20%) (Exhibit I). We asked employers for the first time this year if they offer long-term care

insurance to their employees. Nineteen percent of employers offering health benefits reported that they offer long-term care insurance, with no significant difference between the percentage of small firms (3-199 workers) and large firms (200 or more workers) offering the benefits.

OUTLOOK FOR THE FUTURE

Each year we ask employers what changes they plan to make to their health plans in the next year. Among those that offer benefits, large percentages of firms report that in the next year they are very or somewhat likely to increase the amount workers contribute to premiums (45%), increase deductible amounts (37%), increase office visit cost sharing (42%), or increase the amount that employees have to pay for prescription drugs (41%). Although firms report planning to increase the amount employees have to pay when they have insurance, few firms report they are somewhat or very likely to drop coverage (3%) or limit eligibility (5%) in the next year. And even though the HDHP/SO offer rate or enrollment did not increase significantly from 2006, one-fifth of firms report being somewhat

likely (18%) or very likely (2%) to offer an HSA-qualified HDHP in the next year, and almost one-quarter report being somewhat likely (21%) or very likely (3%) to offer an HDHP/HRA in the next year.

The employer-sponsored health benefits market did not experience large changes in 2007. Employers and employees benefited from the continued moderation in the rate of premium increases, a welcome relief from the much higher growth rates earlier in the decade. History suggests that premium trends are cyclical,¹⁰ and after four years of downward premium trends, it is unclear how much longer this relative lull in premium growth will continue before pressures on health insurers to improve profitability will push premium trends on an upward path. While widespread adoption of HDHP/SOs

could help maintain lower premium growth with firms moving to less expensive packages and higher cost sharing reducing service use, enrollment to date in these plans remains low.

Unfortunately, the recent moderation in premium trends has not reversed the erosion in the percentage of employers offering health benefits that occurred between 2000 and 2005. During that period, the percentage of employers offering coverage fell from 69% to 60%. While the offer rate seems to have stabilized with lower premium increases and a reasonably strong economy—it is essentially unchanged over the last three years—it is unclear what conditions would be necessary for the employer offer rate to move back toward the higher levels that we saw at the beginning of the decade.

¹Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, *Health Insurance Coverage in America, 2005 Data Update*, May 2007. Available at www.kff.org/uninsured/upload/2005dataupdate.pdf.

²Data on premium increases reflect the cost of health insurance for a family of four.

³For HMO coverage, there is insufficient data to report the result.

⁴For the first time this year, we present cost sharing for prescription drugs by tier level. For example, average copayments are presented separately for those that report three or four-tier cost sharing, two-tier cost sharing, or the same cost sharing regardless of type of drug. See the Introduction to Section 9 for more information available at <http://www.kff.org/insurance/7672/section9ehh07-04c9-1.cfm>.

⁵For POS plans, there is insufficient data for the percentage of workers with coinsurance to make the comparison.

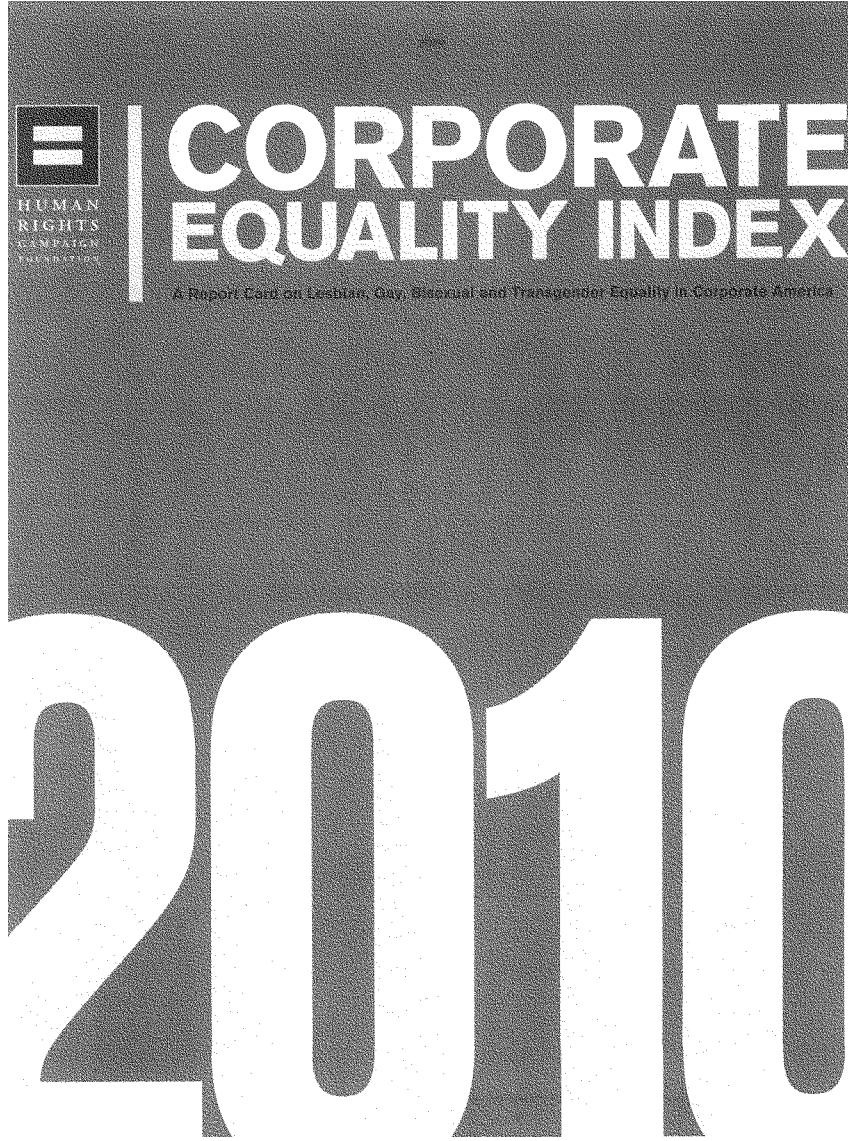
⁶Among those with no out-of-pocket limit for single coverage, 88% have a deductible of less than \$500, 16% face coinsurance for hospital admissions, and 22% face coinsurance for an outpatient surgery episode.

⁷Data presented is for workers with a family aggregate out-of-pocket maximum where the limit applies to spending by any covered person in the family.

⁸The 2004 survey asked firms whether nontraditional partners were eligible for health benefits and, if so, whether their definition included same-sex couples or opposite-sex couples or both. In 2007, the survey asked whether firms offered coverage to nonmarried same-sex or opposite-sex couples or both.

⁹Section 125 of the Internal Revenue Service Code permits employees to pay for health insurance premiums with pre-tax dollars. Section 125 also allows the establishment of flexible spending accounts (FSAs). An FSA allows employees to set aside funds on a pre-tax basis to pay for medical expenses not covered by health insurance. Typically employees decide at the beginning of the year how much to set aside in an FSA, and their employer deducts that amount of the employee's paycheck over the year. Funds set aside in an FSA must be used by the end of the year or are forfeited by the employee. FSAs are different from HRAs and HSAs.

¹⁰By M. Grossman and Paul B. Ginsburg, "As the Health Insurance Underwriting Cycle Turns: What Next?" *Health Affairs*, 23, no. 6 (2004): 91. Alice Rosenblatt, "The Underwriting Cycle: The Rule of Six," *Health Affairs*, 23, no. 6 (2004): 103.



Human Rights Campaign Foundation

1640 Rhode Island Ave., N.W., Washington, D.C. 20036
 phone **202/628-4160** TTY **202/216-1572** fax **866/369-3348**
 website **www.hrc.org/workplace** e-mail **workplace@hrc.org**

The Human Rights Campaign Foundation believes that all Americans should have the opportunity to care for their families, earn a living, serve their country and live open, honest and safe lives at home, at work and in their community.

Through pioneering research, advocacy and education, the HRC Foundation pursues practices and policies that support and protect lesbian, gay, bisexual and transgender individuals and their families in education, healthcare, corporate, public and private organizations across the country.

The HRC Foundation also provides accurate, timely research and information vital to the LGBT community, straight allies and policymakers on a wide range of issues, including: family law, senior health and housing, parenting, schools, workplace policies and law, religion, civil unions, marriage, adoption, financial planning and healthcare.

Our programs, which include the Workplace Project, the Religion and Faith Program, the Coming Out Project, the Family Project and Youth and Campus Outreach, are possible through the generous gifts of individual donors and corporate and private philanthropic foundations. Contributions to the HRC Foundation are tax-deductible to the fullest extent of the law. See **www.hrc.org/foundation** for more.

The Human Rights Campaign Foundation encourages LGBT Americans to live their lives openly and seeks to change the hearts and minds of Americans to the side of equality. The HRC Foundation is a nonprofit, tax-exempt 501(c)(3) organization.

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www.hrc.org/cei 

FROM THE HRC FOUNDATION PRESIDENT

I am honored to share with you the Human Rights Campaign Foundation's Corporate Equality Index 2010 report – and the tremendous progress it demonstrates.

In these challenging economic times, the Corporate Equality Index once again demonstrates that businesses recognize the importance of working with and providing for lesbian, gay, bisexual and transgender workers and consumers.

For every loss from bankruptcy or acquisition, several new businesses reached 100 percent. In addition, opposition from anti-LGBT organizations did not stem the tide of fairness. Major employers stepped forward in unprecedented ways, including steadfast support for marriage equality in California.

The number of top-rated businesses continues to climb, reaching an unprecedented 305 businesses – a net increase of 45 over last year – representing more than 9.3-million full-time employees.

And while the CEI continues to challenge employers to improve policies and practices, we embarked on intensive, groundbreaking research focusing on LGBT employees' actual working climate. The forthcoming results will show that the majority of LGBT employees – including the newest generation of workers –

still fear professional backlash from being open in the workplace.

Passing an inclusive federal Employment Non-Discrimination Act would unequivocally support employers' LGBT inclusion efforts. But we're finding that, even in states with supportive laws on the books, employees still report unnecessary challenges.


That's why, in March 2009, we announced new CEI criteria that will go into effect in 2011 (for the CEI 2012 report). They establish new standards for employers that get to the heart of organizational competence on LGBT inclusion and provides them with the tools to ensure that all employees are treated fairly and equally.

At a time when holding onto a job is so critical for so many of us, we must be on guard to ensure that we are judged on the quality of our work and not our sexual orientation or gender identity. It is our hope that the Corporate Equality Index will help establish a level of fairness that all employees expect and deserve.

Thank you,



Joe Solmonese
President, Human Rights Campaign Foundation

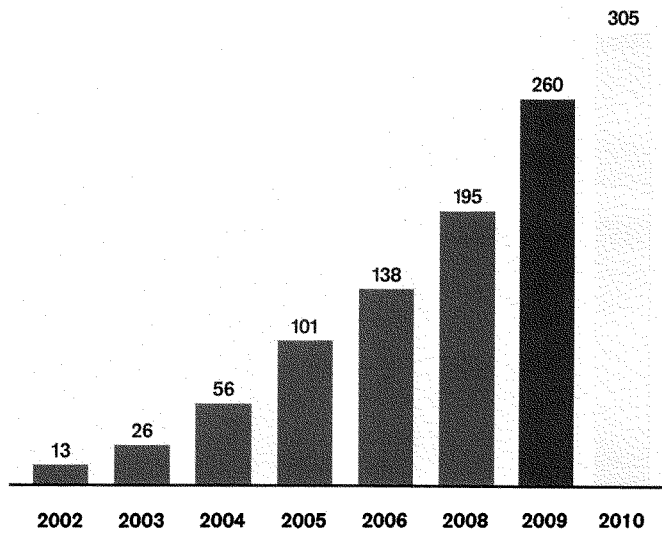
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OVERVIEW

305 businesses achieved the top rating of 100 percent this year, compared with 260 businesses in the previous year. This accounts for 58 businesses that reached 100 percent for the first time and 13 no longer on the list, for a net increase of 45 businesses. Collectively, these businesses employ 9,328,085 full-time U.S. workers. When the Corporate Equality Index was launched in 2002, only 13 businesses achieved 100 percent.

A complete list of ratings is available as Appendix A on p. 21.



* Because the Corporate Equality Index is typically released in the fall, the HRC Foundation began naming reports using the subsequent calendar year in 2007. This change ensured that subsequent ratings will remain relevant for more than the final few months of the year in which each report is released. More information is available online at www.hrc.org/issues/7582.htm.

OF FINDINGS

A total of 590 businesses were rated this year, including 40 businesses rated for the first time. **The average rating across the entire index was 86, compared to 83 percent last year.**

Ten businesses' ratings improved by at least 30 points: **AMC Entertainment Corp.**; **Baker, Donelson, Bearman, Caldwell & Berkowitz PC**; **Brown-Forman Corp.**; **Finnegan, Henderson, Farabow, Garrett & Dunner LLP**; **H.E. Butt Grocery Co.**; **Interpublic Group of Companies Inc.**; **Morningstar Inc.**; **Pacific Life Insurance Co.**; **Perot Systems Corp.** and **Xcel Energy Inc.** More than a decade after rescinding partner benefits in 1997, **Perot Systems Corp.** reinstated partner benefits in January 2009.

Two businesses received ratings of zero: energy companies **Exxon Mobil Corp.** and **The Laclede Group Inc.** **ExxonMobil** continues to lose points for resisting shareholder pressure to amend its non-discrimination policies. Similarly, two other companies continued to oppose shareholder resolutions to amend their non-discrimination policies to include gender identity and lost points on their overall rating: **Verizon Communications Inc.** and **Wal-Mart Stores Inc.**

Meanwhile, **Delta Air Lines Inc.**, which opposed a similar resolution in 2005, added gender identity to its non-discrimination policy and reached 100 percent this year.

Progress at the Fortune-Ranked Businesses

This was the fourth year that the Fortune 1000 businesses list of the largest publicly traded companies was invited to take part in the Corporate Equality Index survey. The Fortune 500 list has been invited each year since 2002.

Of the 268 Fortune 500-ranked businesses that the CEI rated, 123 received 100 percent ratings, with an average CEI rating of 83. Of the 58 Fortune-ranked businesses between 500 and 1000, 15 received 100 percent ratings, with an average rating of 70.

Eleven of the Fortune top 20 received 100 percent ratings. **McKesson Corp.** added gender identity this year to reach 83 percent.

* Based on historic data

	FORTUNE 2008 RANK	CEI 2010 RATING
Wal-Mart Stores Inc.	1	40
Exxon Mobil Corp.	2	0
General Motors Corp.	3	100
Chevron Corp.	4	100
ConocoPhillips	5	70
General Electric Co.	6	80
Ford Motor Co.	7	100
Citigroup Inc.	8	100
Bank of America Corp.	9	100
AT&T Inc.	10	100
J.P. Morgan Chase & Co.	11	100
American International Group	11	85*
Berkshire Hathaway Inc.	12	-
Verizon Communications Inc.	13	70
Hewlett-Packard Co.	14	100
International Business Machines Corp. (IBM)	15	100
Valero Energy Corp.	16	-
McKesson Corp.	18	83
Cardinal Health	19	100
Goldman Sachs Group Inc., The	20	100

www.hrc.org/cei

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STATEMENT OF

**William H. Hendrix, III, Ph.D., Global Leader, Gays, Lesbians and Allies at Dow
THE DOW CHEMICAL COMPANY
Midland, Michigan**

**For the hearing on
Domestic Partner Benefits for Federal Employees**

**Before the
Senate Committee on Homeland Security and Governmental Affairs**

**On
October 15, 2009**

Chairman Lieberman, Ranking Member Collins and members of the Committee for Homeland Security and Governmental Affairs, my name is Dr. Bill Hendrix, and I am the Biology Team Leader for Insect Traits and Seed Treatment within Dow AgroSciences LLC, a 100% wholly owned subsidiary of The Dow Chemical Company. I hold a Ph.D. in Entomology from Iowa State University and have worked for Dow for 20 years.

In addition to my role as a biology team leader within Dow, I also serve as the chair of the Company's Gays, Lesbians and Allies at Dow (GLAD) Network, an affinity group advocating for gay, lesbian, bisexual, transgender and ally employees within the company. GLAD is one of seven employee networks at Dow, all working toward promoting an increasingly diverse and inclusive workplace. Our seven global employee networks comprise 120 local chapters, engaging hundreds of employees around the world in promoting respect, tolerance and greater understanding among our diverse workforce. GLAD was first established in 2000.

First, I will provide some background on Dow. Dow was founded 112 years ago in Midland, Michigan, a small town of about 40,000 people just over 100 miles north of Detroit. Our small town Midwestern roots have encouraged us to establish our enduring Core Values of Integrity and Respect for People. It is these Values that form the very heart of our approach to Diversity and Inclusion.

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Over the years, as we have grown and become a major player in the global economy, Diversity and Inclusion have truly become key elements of our corporate culture. Just consider our footprint: we serve customers in 160 countries, we have manufacturing sites in 35 different countries, and at last count, my 46,000 colleagues represent about 100 different nationalities—all working together to generate \$57.5 billion in annual sales. On April 1, 2009, Dow completed its acquisition of Rohm and Haas, a \$10 billion specialty chemicals company, expanding our growth potential and our reach into new markets and geographies.

Clearly, diversity underpins our workforce, our culture and, indeed, our business model. In a highly competitive world where innovation is the key to securing competitive advantage, we know that it is our “Human Element” that is key to our success. As a result, we know that creating a respectful, inclusive working environment is not only a matter of fairness and equality, but also one of critical economic and business importance. Likewise, we feel that S. 1102, the Domestic Partnership Benefits and Obligations Act of 2009, will similarly help the US government create a more respectful and inclusive work environment.

With a shrinking and ever more diverse talent pool – particularly in the sciences and engineering – it is essential for us to actively include everyone to ensure we attract, develop and advance the very best talent available in the marketplace. As an industrial, business-to-business supplier with virtually no consumer marketing, located largely in smaller rural areas, we must work even harder to have an identifiable employer brand to attract top talent. We see our proactive stance on diversity and inclusion as a key element of this brand.

Our open policy allows us to hire the best employees, with the greatest range of perspectives. When we discuss Domestic Partnership policies in the workplace, we do so knowing that this policy gives us an advantage. Because we don't have major offices or facilities in the metropolitan areas in the US, our employees who would like access to

domestic partnership policies often have more protection and freedoms under Dow's policies than under the laws of their state or locality.

Specifically, our Lesbian, Gay, Bisexual and Transgender (LGBT) policies have been good for our workplace for two main reasons: a) retention of our employees has been enhanced, because they know that they can perform their jobs openly and with full support of their family situation without fear of repercussion and therefore have more reason to be committed to the company in return, and b) better recruitment of allies and younger workers, who often use employee benefits, such as support for domestic partnerships and flexible work hours, as a litmus test for prospective employers. We have been widely recognized in the past for our work on LGBT issues:

- a 100% ranking on Human Rights Campaign (HRC) Corporate Equality Index for the United States for the fifth straight year. Dow was the first chemical company to receive such an award.
- The International Gay and Lesbian Chamber of Commerce (IGLCC) awarded Dow Chemical Company a third place as a leading corporation in the first edition of the International Business Equality Index. The Index is a measurement of the performance of multinational corporations in relation to Diversity and Inclusion issues specifically focusing on LGBT communities in the countries where they operate.
- Selected by Human Rights Campaign as a 2010 Best Places to Work for LGBT Equality
- Dow Received the Lambda Legal Corporate Leadership Award. The award honors companies and/or organizations based on their internal policies, employee resource groups and external practices regarding sexual orientation and gender identity.

For Dow, like most companies, the offering of benefits to LGBT employees has been the result of a multi-stage journey. We first instituted sexual orientation in our employment nondiscrimination policies in 2000. We then added parity for domestic partnerships in 2002. We added protections based on gender identity in 2007. A copy of our policy is

attached as exhibit A. Of special note, we have implemented this globally for all the 160 countries in which we have employees!

The offering of domestic partner benefits is certainly not out of the norm within the US top employers. According to the Human Right Campaign Foundation 2010 Corporate Equality Index “the majority of Fortune 500 companies provide them, and they remain an overall low-cost, high-return benefit for businesses”. Currently 94% of the ranked companies in that survey offer domestic partner benefits to same-sex couples and 70% offer them to opposite sex couples.

Often domestic partners benefits are seen as just a benefit for same sex couples. But, domestic partner benefits do not only attract LGBT employees. Many companies report that the implementation of domestic partner benefits helps attract and retain critical talent from non-gay and lesbian talent. These particular candidates have reported that the existence of a domestic partner benefits policy shows that the company values and truly believes in a workplace that respects and protects all employees. It also shows our commitment to including diverse perspectives. This trend is especially prevalent among younger candidates of the workforce -- a segment crucial to the future demographics of any employer.

Within Dow, we have instituted policies to create parity between those who are traditionally married and those couples who would like to take advantage of our domestic partner benefits. Therefore, we offer benefits to both same-sex and opposite-sex couples, and those who qualify also have access to a wide arrange of benefits, which, on the whole, are very similar to the benefits outlined in S. 1102. Many of these benefits don't require the company to incur any additional costs. As examples, in addition to our US medical plan, prescription drug plan and dental plan, employees have access to family leave, insurance, pension, adoption assistance, and international relocation benefits. Where a benefit is offered to a traditional spouse, we try to offer the same benefit to a domestic partner. Therefore, partners may take advantage of company discounts, visits to

the fitness center, access to the flu prevention program and ability to open accounts at the credit union.

Obviously, on an international scale, local law can impact our offerings within different countries and for international relocation. However, the global policy is to provide parity between domestic partners and those that are traditionally married within that country.

Our management is sensitive to critical issues relating to the cost that offering such benefits could add to our company's bottom line. After seven years of offering domestic partner benefits to both same and opposite sex couples, I can tell you that this program DOES NOT add significantly to the bottom line. Currently, Dow Chemical has 105,653 covered lives under our U.S. Medical Plan at an annual cost of \$325 million. This number includes employees, retirees and dependents of both employees and retirees. We currently have 282 domestic partners who are covered under Dow's US health benefits. That represents 0.27% of the covered lives. Interestingly, the average net payments for domestic partners is approximately 0.24% of our total spending (or \$770,000 total and \$2,730 per domestic partner) on Dow U.S. medical plans or slightly less than the proportion of the population that they represent.

A second concern is how you create a registry of qualified domestic partnerships. This entails a balance between respecting the individual's need for privacy and discretion with the company's need to install guidelines, as there are no national or state registries, such as a marriage license, within most states. In exhibit B, we have attached our policy for determining the existence of a qualified domestic partner relationship. Once this form is completed by the employee, the couple is granted access to all of Dow's domestic partner benefits. To date, we have had no issue with fraudulent claims for benefits. In fact, according to Lambda Legal, time has shown that fraud has not been a problem in domestic partner benefits programs; it is probably less a risk than among employees claiming to be married, due to the tax penalty incurred with domestic partner benefits (<http://www.lambdalegal.org/issues/same-sex-relationships/tips-for-negotiating-for.html>)

Perhaps the final concern we faced in implementing our program is how to successfully implement domestic partner benefits throughout a diverse organization like Dow. For us, the key has been a strong combination of executive support creating the right tone at the top regarding inclusion, a well articulated business case rooted both in talent management and in our Company's values, and lastly a strong network of both LGBT and ally employees working together through the GLAD Network. Our Network actively engages allies to help bridge discussions on topics of inclusion with our larger population.

Public policy can also augment a company's diversity program. Accordingly, Dow continues to strongly support the Tax Equity for Domestic Partner and Health Plan Beneficiaries Act (S. 1556). Unfortunately, current law requires an employee, whose domestic partner receives health benefits, to pay taxes on their employer's contribution for health insurance benefits, and both the employee and employer must pay payroll taxes on this additional taxable income. The legislation would eliminate these taxes and allow those employees, who currently cannot afford the extra taxes, to offer health coverage for their loved ones. It would, by small extension, allow equal benefits between domestic partners and their married co-workers.

Overall, Dow has found it a relatively easy transition to offer domestic partner benefits. The cost has been minimal while the impact to daily culture has been immense. Every time an email goes out to the employees stating that "spouse/domestic partner" is included, we send a positive message for workplace inclusion and reinforce our "Human Element" advantage.

Dow appreciates the chance to share our views and applauds the committee's work to gather more information on domestic partner benefits within the workplace. We strongly support the addition of these policies to all workplace environments and stand ready to assist the federal government in the review of its own policies in this area. We welcome any further questions you may have.

Exhibit A

Our Global Policies for Inclusion -- Respect and Responsibility

(<http://www.dow.com/diversity/beliefs/inclusion.htm>)

We encourage a culture of mutual respect in which everyone understands and values the similarities and differences among our employee, customers, communities and other stakeholders. We work to provide an atmosphere that encourages positive interaction and creativity among all employees.

It is the policy of The Dow Chemical Company that employees be provided a work environment which is respectful and free from any form of inappropriate or unprofessional behavior, such as harassment including sexual harassment, pestering or bullying and any form of unlawful discrimination based on sex, gender, race, sexual orientation, gender identity, disability, age, ethnic origin, or other inherent personal characteristic protected by law.

Exhibit B

STATEMENT OF DOMESTIC PARTNER RELATIONSHIP

I. DECLARATION

In order to establish a domestic partner relationship to qualify for certain benefits that The Dow Chemical Company and certain of its subsidiaries ("Dow") determines to offer in their sole discretion to Domestic Partners from time to time, we, _____ and _____

participant Name / ID Number or Social Security Number (print) ("participant")	Domestic Partner Name (print) ("Domestic Partner")
--	---

certify that we are Domestic Partners in accordance with the criteria listed in Section II of this Statement and we certify further that we have read and understand all of the provisions of this Statement.

II. CRITERIA

We certify that we meet all of the following criteria:

- A. We have lived together for at least twelve (12) consecutive months immediately preceding our signing of this Statement;
- B. We are not married to other persons either now, or at any time during the twelve month period;
- C. We are each other's sole domestic partner in a committed relationship similar to a legal marriage relationship and we intend to remain in the relationship indefinitely;
- D. If we reside in a state or municipality which provides for registration of domestic partners, we have so registered and we have provided the Company with evidence of such registration;
- E. We are both legally competent and able to contract;
- F. We are not related to each other in a way which would prohibit legal marriage between opposite sex individuals;
- G. We are not acting fraudulently or under duress; and

- H. We are financially interdependent and have provided the Company with the following two items of proof evidencing our financial interdependence:
(check any two of the following)

- proof of joint bank account
- proof of joint lease/ownership of mutual residence
- joint billing statements for residential utilities (gas, electric, telephone, etc.)
- joint insurance documents (property, life, automobile)
- joint credit card accounts
- joint loan agreements
- joint automobile ownership

Or

We certify that we are registered as domestic partners, or partners in a civil union in a state or municipality or country that legally recognizes such domestic partnerships or civil unions and we have provided the Company with evidence of such registration.

III. CHANGE IN DOMESTIC PARTNERSHIP

We agree to notify The Dow Chemical Company, or in the case of an employee benefit plan, the Plan Administrator (collectively referred to in this Statement as "the Company") if there is any change in our status as it relates to our Domestic Partner relationship. We further agree that such notification must be made within 30 days of a change in status by the participant submitting to the Company a completed Termination of Domestic Partner Relationship form.

We acknowledge that only the participant's signature is required on such form and that the Company is under no obligation to notify the Domestic Partner of the filing of the Termination of Domestic Partner Relationship form or termination of any applicable benefits.

We understand that, regardless of whether a Termination of Domestic Partner Relationship form is filed, a Domestic Partner relationship is no longer recognized by the Company if the participant and Domestic Partner no longer meet the criteria of a domestic partner relationship as set forth in Section II of this Statement, the effect of which shall be the same as if a Termination of Domestic Partner Relationship form has been filed. The Company, however, has no affirmative obligation to change the status until it has satisfactory notice of the change in status. With respect to relocation benefits, such benefits for the Domestic Partner shall automatically cease at the end of the month following the earliest of any of the following:

- A. the termination of participant's employment with the Company
- B. the death of participant
- C. the death of Domestic Partner
- D. the failure of participant and Domestic Partner to continue to meet the criteria for a domestic partner relationship as set forth in Section II of this Statement
- E. the filing of a Termination of Domestic Partner Relationship form with the Company.

All other terms and conditions of the applicable benefit plan or policy or procedure apply.

Participant understands that another Statement of Domestic Partner Relationship for any new or former domestic partner cannot be filed with the Company until at least twelve (12) months after there has been a termination of Domestic Partner benefits for any reason.

IV. ACKNOWLEDGEMENTS

We further understand and agree as follows:

- A. We certify that this Statement is submitted for the purpose of securing certain benefits for Domestic Partner and we affirm under penalties of perjury that the statements made in this Statement are true and accurate representations to the best of our knowledge.
- B. We understand that if any of the representations contained in this Statement are false or fraudulent, any benefits provided to Domestic Partner will be void or voidable, retroactive to the date of this Statement.
- C. We understand that we are jointly and severally responsible for the reimbursement of any expenses incurred as a result of any false or misleading statement contained in this Statement, or as a consequence of failing to notify the Company of a changed circumstance affecting the eligibility of our Domestic Partner Relationship. Such expenses may include legal fees and the cost of any benefits paid by the Company to Domestic Partner.
- D. We understand that the purpose of this Statement is to establish a Domestic Partner Relationship only and, that by accepting this Statement the Company does not guarantee eligibility for coverage or benefits for Domestic Partner as eligibility for coverage and benefits is determined on

the basis of all of the terms and conditions of the applicable Company benefits policies or plans, and state and federal law.

- E. We acknowledge that we are advised to consult an attorney regarding the possibility that the filing of this Statement may have certain legal and tax consequences, including the fact that it may, in the event of a termination of the Domestic Partner Relationship, be regarded as a factor leading a court to treat the relationship as the equivalent of marriage for the purpose of establishing and dividing community property, or for ordering payment of support.
- F. participant acknowledges that the making of any false or misleading statements in this Statement may lead to disciplinary action by the Company which may include dismissal.

V. DOW'S RIGHTS

- A. Dow reserves the right to modify or amend, at any time and in any way whatsoever, the terms of any applicable benefits, including eligibility requirements or the terms and conditions for coverage of Domestic Partners or to terminate coverage completely.
- B. Dow reserves the right to modify the criteria for establishing a Domestic Partner relationship and to request appropriate additional documentation in support of this Statement.

We declare, under penalty of perjury under governing state laws, that the statements set forth above are true and correct.

participant:

 Signature Date: _____

Domestic Partner:

 Signature Date: _____

**Post-Hearing Questions for the Record
Submitted to the Honorable John Berry
From Senator Joseph I. Lieberman**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

- 1. You testified that you believe the enactment of S. 1102 could strengthen the ability of the federal government to recruit and retain the best workers, and could help federal agencies maintain and improve morale and productivity. Could you expand on these points, providing examples and data that may support your view?**

Based on the experience of other employers, we believe the addition of domestic partner benefits will help the Federal Government recruit and retain qualified employees. Employers in both the public and private sectors have reported that domestic partner benefits are an effective tool for recruitment and retention.¹

According to the Williams Institute at the UCLA School of Law, two studies have found that domestic partner benefits reduce the likelihood that a lesbian, gay or bisexual employee will consider leaving his or her job.² The Williams Institute also found that a majority of heterosexual workers surveyed agree that all employees should be guaranteed equal benefits, regardless of their sexual orientation.³

These positive outcomes are supported by the prevalence of domestic partner benefits in the private sector. Almost 60 percent of Fortune 500 companies already offer similar benefits to the same-sex domestic partners of their employees. As the chart “How Many Fortune-Ranked Companies Provide Domestic Partner Benefits” indicates, more and more employers are choosing to provide these benefits even in difficult economic times. In addition, 20 States offer these benefits to their employees.

If we fail to offer comparable job benefits to all our employees, the Federal Government will have a more difficult time competing effectively with other large employers for talent. We need legislative relief to correct the current laws under which many of our employee benefit programs operate. Offering domestic partner benefits will help address employment gaps and assist agencies in recruitment and retention.

¹ Winnie Stachelberg, Josh Rosenthal and Claire Stein-Ross, “One Simple Step for Equality, States prove that the federal government can offer domestic partner benefits with ease” (Center for American Progress, September 2008)

² Williams Institute Research Director Lee Badgett’s written testimony delivered to the Congressional Subcommittee on Federal Workforce, Postal Service, and the District of Columbia on HR 2517: Domestic Partnership Benefits and Obligation Act of 2009, July 8, 2009.

³ M.V. Lee Badgett, “The Financial Impact of Domestic Partner Benefits in New Hampshire” (The Williams Institute, 2006)

2. **This legislation would extend federal government employment benefits at a time when the economy is still struggling and when many people in our country are worried about keeping their jobs or have lost their jobs.**

Mr. Berry, what answer would you give to the people in our country who are still struggling to make ends meet for themselves and their families, and who ask whether this is the right time for us to extend benefits for federal employees and their loved ones?

Do you believe it is relevant that the chart “how many Fortune- Ranked Companies Provide Domestic Partnership Benefits” (which has been included in the record) indicates that the percentage of companies providing these benefits have continued to rise even over the past year? For example the percentage of Fortune 500 companies providing domestic partnership benefits has gone up from 57% in 2008 to 59% in 2009.

The information presented in the chart provides evidence that employers in the private sector continue to see adding domestic partnership benefits as a good business decision, even in these economic times. The chart indicates that the number of employers in the Fortune 500 and the Fortune 1000 that provide domestic partnership benefits increased in 2009. Where many employers are cutting costs and benefits, the number of Fortune-ranked companies offering domestic partner benefits has risen.

As I testified at the hearing, the cost of extending these benefits to same-sex domestic partners is negligible. To add domestic-partner health insurance and survivor benefits for both Federal workers and retirees would cost approximately \$56 million in 2010. The marginal increased cost equates to about 2-tenths of a percent of the entire cost to the Federal Government of the Federal Employees Health Benefits (FEHB) Program.

It is also worth noting that allowing Federal employees to enroll their same-sex domestic partners and related children in health insurance may reduce the number of uninsured people, since at least some of those partners and children were likely to be without insurance. A recent study shows that 20 percent of people in same-sex couples have no health insurance.⁴ Uninsured partners and children may be accessing healthcare through costly emergency rooms or may be enrolled in Government-provided healthcare programs. A report by the Williams Institute analyzing the costs of providing domestic partner benefits to Federal employees indicates that allowing Federal employees to enroll same-sex partners and children in the FEHB Program would likely reduce both Federal and non-Federal expenditures on uncompensated care for those individuals.⁵

⁴ Michael A. Ash and M.V. Lee Badgett, “Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples,” *Contemporary Economic Policy* 24(4):582-599, 2006.

⁵ Naomi G. Goldberg, Christopher Ramos, M.V. Lee Badgett, *The Fiscal Impact of Extending Federal Benefits to Same-Sex Domestic Partners*, (Williams Institute, September 2008)

- 3. If domestic partnership benefits legislation is enacted, how will OPM, as the agency responsible for overall management of the federal government's recruitment and retention efforts, ensure that the federal applicants and federal employees are aware of the domestic partner benefits available to them? How would OPM make sure that federal employees get the assistance they need in enrolling in the domestic partnership benefits program?**

Federal Government human resources services are decentralized; each Federal agency carries out its own human resources management functions, including benefits enrollment and payroll deductions, for its own employees. OPM's role is to provide detailed and accurate guidance and information to agency human resources personnel, including agency benefits officers, who then relay information and process personnel actions for agency employees.

OPM communicates with agency benefits officers and other human resources personnel in multiple ways. We write and distribute Benefit Administration Letters (BALs) to agency human resources personnel explaining and clarifying changes in Governmentwide policy that affect Federal employee benefits. These letters often provide detailed instructions on what notice and materials should be provided to employees, such as the guidance provided in association with the Annual FEHB Program Open Season. Agency human resources personnel also have opportunities to initiate communication with OPM. Each agency has a Human Capital Officer who has a specific point of contact within OPM to provide guidance and answer questions.

In addition to OPM's role in providing guidance to human resources personnel, OPM's website gives employees and the public detailed benefits information. In addition, the Federal Government online job search and application website, USAJOBS.gov, provides applicants with information on Federal benefits and links for further information. OPM would use all of these methods to ensure that Federal applicants and employees are aware of the domestic partner benefits available to them and that they receive the assistance they need in enrolling in the domestic partnership benefits program.

- 4. The federal government has standards for religious freedom and expression that provide safeguards for religious and other points of view to be in the federal workplace, consistent with respect for differences and for the constitutional separation of church and state. Would providing benefits for same-sex partners have any impact on the religious rights and liberties of any federal employees?**

Employees in established domestic partnerships are currently in the workforce and are hired, fired, and promoted just the same as their fellow employees. We do not believe adding domestic partner benefits in any way infringes on the rights and liberties of any Federal employee.

- 5. Some have argued that S. 1102 would contradict existing law by elevating same-sex relationships outside of marriage to the same status as a binding legal marriage, and**

that S. 1102 would demean the importance of marriage. What are your thoughts on this?

We believe that S. 1102 does not contradict existing law by creating an equivalence between domestic partnerships and marriage, and it certainly does not demean the importance of marriage. Rather, the bill allows same-sex couples in committed relationships to register as domestic partners for purposes of Federal benefits and obligations – a status entirely distinct from the State-recognized status of marriage. This administration believes that same-sex couples in committed relationships should enjoy the same benefits and shoulder the same obligations as married opposite-sex couples, but it also believes that the institution of marriage is one that should be left to the States. Accordingly, this bill does nothing to change any State's definition of marriage.

**Post-Hearing Questions for the Record
Submitted to the Honorable John Berry
From Senator Daniel K. Akaka**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

- 1. The Office of Special Counsel (OSC) recently updated its website to accurately reflect that sexual orientation discrimination is considered a prohibited personnel practice that OSC can investigate. Please comment on why it is important to provide robust protection against sexual orientation discrimination, if we are to extend domestic partnership benefits.**

OPM shares the OSC's view that discrimination based on sexual orientation is a prohibited personnel practice. As I said in my testimony, we are committed to recognizing the value of every American family and to the ideal of equal treatment under the law. Extending domestic partnership benefits to Federal employees is one manifestation of our commitment to these principles, which are central to our identity as Americans.

**Post-Hearing Questions for the Record
Submitted to the Honorable John Berry
From Senator Tom Carper**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

- 1. In your testimony you express some reservations about OPM handling the actual filing and processing of the domestic partnership affidavits. Could you discuss who would be more appropriate to handle those affidavits?**

Each Federal agency carries out human resources management functions, including benefits enrollment and payroll deductions, for its own employees. OPM does not serve as a central Governmentwide clearinghouse for personnel actions. It is appropriate for the employing agency's human resource office to collect and process domestic partnership affidavits. Currently, employing offices maintain employees' personnel files, including benefit election forms. It would be a relatively smooth transition for employing offices to collect affidavit forms and keep them in the employees' personnel files with other benefit election forms.

- 2. During your testimony, you stated that certain efficiencies and program reforms you plan to implement will more than offset the estimated costs of enacting S. 1102. Could you give more detail on the sorts of reforms you are planning?**

In my testimony I stated that increasing administrative efficiencies within the FEHB Program could potentially cover some of the costs associated with providing domestic partner benefits. While the provision of domestic partner benefits will lower retirement costs by \$19 million due to reductions in annuities of retirees who elect to provide survivor benefits for their domestic partners, I think that other savings could be realized through modernizing the FEHB Program.

As you know, the FEHB Program was created more than 50 years ago and has proved a remarkably sturdy model for providing Federal employees with health care coverage. The model has changed little over that time. OPM staff is conducting a thorough examination of the Program to prepare for the next 50 years. I look forward to working with the Committee on these issues.

**Post-Hearing Questions for the Record
Submitted to the Honorable John Berry
From Senator Tom Coburn**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

1. What are the estimated costs for indefinitely continuing qualifying former domestic partners in the FEHB Program?

There would be little to no cost for indefinitely continuing qualifying former domestic partners in the Federal Employees Health Benefits (FEHB) Program. Former spouses who receive benefits in accordance with the Spouse Equity Act must pay both the employee and the Government share of the premiums. Therefore, there would be no additional premium costs to the Government to cover these individuals.

However, there is an administrative cost to providing former domestic partners the same benefits as former spouses are currently eligible to receive. For a former spouse to be covered under spouse equity provisions in the FEHB Program, that individual must have a future entitlement to receive a portion of the employee’s retirement annuity or a survivor annuity. Often, these entitlements are provided as a result of a court order in a divorce proceeding.

Benefits provided to former spouses under a court order have no corollary in former domestic partner situations, because in most cases there are no court orders telling OPM how to award benefits. Even in cases where a same-sex marriage (and divorce) exists, we are concerned that the Defense of Marriage Act might prevent OPM from recognizing a court order following the divorce. Litigation over contested claims would invariably result, delaying final determination of both the case at hand and similar cases until the judicial process has been completed, which would increase administrative costs to OPM.

2. What are the estimated costs for indefinitely continuing qualifying former domestic partners in the full package of federal benefits provided for under S. 1102?

The base cost each year would remain the same. In other words, domestic partnerships do not cost more in each ensuing year. The percentage cost – or savings – would be the same ratio in each succeeding year.

3. How did OPM arrive at this figure of 440 current annuitants and the resulting cost increase of \$31 million?

We have revised our cost estimate summary below to reflect current assumptions:

Domestic Partners – Estimated Program Costs

Year	FEHB Health Insurance		CSRS/FERS Retirement		Totals	
	Current Employees	Employees and Retirees	Current Employees	Employees and Retirees	Current Employees	Employees and Retirees
(in \$ millions)						
2010	41	72	-3	-16	38	56
2011	45	77	-3	-14	42	63
2012	50	82	-3	-13	47	69
2013	56	88	-4	-11	52	77
2014	62	94	-4	-9	58	85
2015	68	101	-5	-7	63	94
2016	75	108	-5	-5	70	103
2017	83	115	-4	-2	79	113
2018	91	123	-4	-1	87	122
2019	101	132	-4	1	97	133
Total	672	992	-39	-77	633	915

- Assumptions are 0.34% of Federal employees and retirees would declare same-sex domestic partnerships. This is based on a CBO estimate conducted in 2003.
 - FEHB outlays in 2010 are estimated at \$41 million for current employees out of \$39 billion in total outlays (0.1 percent) for about 7,400 additional family members (\$5500 per additional member). Adding 5700 current annuitants would increase costs by about \$31 million.
 - 87,000 employees retire each year, 340 are expected to elect a domestic partner survivor benefit. Of 1,870,000 current retirees, 6300 are expected to elect a domestic partner survivor benefit.
 - Long-term impact of domestic partner survivor benefits for retirement is an additional cost of \$94 million, increasing the current \$634,500 million unfunded liability by less the 0.02%. The total cost is too small to have any impact on the amount contributed by agencies toward FERS contributions for current employees.
 - There would be no effect on budget outlays for other employee benefits. The only life insurance coverage which would be affected would be Option C, coverage for family members, which is employee-pay-all. The Federal dental and vision and long term care insurance programs are voluntary, employee-pay-all programs.
 - The current Lieberman bill does not include social security benefits (which are part of FERS retirement benefits), or tax relief for domestic partner benefits under section 125 cafeteria plans.
- 4. Could you clarify what offset(s) the Administration proposes to use to pay for these increased costs to the American taxpayers, including “efficiencies and improvements” you mentioned in your oral testimony?**

In my testimony I stated that increasing administrative efficiencies within the FEHB Program could potentially cover some of the costs associated with providing domestic partner benefits. While the provision of domestic partner benefits will lower retirement costs by \$19 million due to reductions in annuities of retirees who elect to provide

survivor benefits for their domestic partners, I think that other savings could potentially be realized through modernizing the FEHB Program.

As you know, the FEHB Program was created more than 50 years ago and has proved a remarkably sturdy model for providing Federal employees with health care coverage. The model has changed little over that time. OPM staff is conducting a thorough examination of the Program to prepare for the next 50 years. I look forward to working with the Committee on these issues.

**Post-Hearing Questions for the Record
Submitted to Dr. William H. Hendrix III
From Senator Joseph I. Lieberman**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

1. You and others at the hearing testified that you believe that providing domestic partnership benefits can strengthen the ability of a large employer to recruit and retain the best workers and can help in maintaining and improving morale and productivity. Could you expand on these points, providing any examples and data from your experience that may support this view?

A: We do have numerous examples where the policy helped us attract and retain employees. Sadly, we also have at least one example where we lost an employee before we had our policies in place. Today, as we recruit on college campuses, we have heard from young talent that Domestic Partner (DP) benefits and flexible work hours are two strong indicators to them that our company offers competitive benefits and has a supportive working environment. On occasion, we also hire in mid-level and management roles and we know that our DP benefits are valued by these recruits as well. By way of specific example, we recently hired someone from a California university to our Midland, MI site. Domestic Partner and other LGBT benefits were foremost on the new employee's mind before he accepted the job, as he didn't want to leave his partner unprotected from health insurance. In another example, we recently hired a mid-level scientist from a small start-up company that didn't have DP benefits and this factored significantly into his decision to leave that firm and accept our job offer. This new employee had critical skills we required for a business project, and therefore, our DP benefits gave our company an important competitive advantage. As we mentioned, we have also lost personnel before our policies were in place. In 1992, we relocated a facility from Walnut Creek, CA to Indianapolis, IN. At least one person left Dow to work for the University which offered the DP benefits we did not at the time.

2. The federal government has standards for religious freedom and expression that provide safeguards for religious and other points of view to be expressed in the federal workplace consistent with respect for differences and for the constitutional separation of church and state. From your experience, do you believe that providing benefits for same-sex partners has any impact on the religious rights and liberties of employees?

A: No, we do not. As a multi-national company doing business in 160 countries, we must be aware of many different types of religious and cultural differences, and we work diligently to create a respectful environment for all of our employees. The mere existence of DP benefits in no way infringes on anyone's freedom of religious belief or expression. While it is true some might not personally support the decision to offer DP benefits because of their religious views, simply offering the benefits does not in any way violate the right of those employees to their personal viewpoints. What we demand of all

our employees, regardless of their religious beliefs or sexual orientation is to demonstrate respect for their colleagues at all times.

3. Some have argued that S. 1102 would contradict existing law by elevating same-sex relationships outside of marriage to the same status as a binding legal marriage, and that S. 1102 demeans the importance of marriage. What are your thoughts on this?

A: Dow's decision to offer DP benefits is a business decision, based on attracting and retaining top talent without regard for personal characteristics, including sexual orientation and gender identity. We believe that the federal government, as a large employer, should equally address DP benefits, as provided in S. 1102, on the basis of sound business practice.

**Post-Hearing Questions for the Record
Submitted to Dr. William H. Hendrix III
From Senator Tom Carper**

**“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
October 15, 2009**

1. In the private sector it seems that not offering benefits to same-sex domestic partners is fast becoming the exception rather than the rule. I understand most of the Fortune 500 companies now offer these benefits, and the majority of Delaware’s top employers, such as Bank of America and DuPont, also offer them. What competitive advantages do these companies enjoy because of their decision to extend same sex domestic partnership benefits?

A: We feel that Domestic Partnership benefits offer several competitive advantages in attracting top talent over employers who don’t offer similar benefits.

In the competitive job market, often the pay scale among companies will be fairly similar, so an individual’s decision on employment is often made based on multiple “soft” factors. For many campus recruits, the existence of Domestic Partner (DP) benefits and flexible work hours are signs that a company truly stands behind its commitment to a diverse workforce and an inclusive work environment, both of which are highly valued particularly by today’s younger employees. So, while a potential employee may not want to take advantage of DP benefits today, they will consider this when deciding on a job offer. We have had potential employees who are heterosexual and married express that they felt DP benefits were a good indicator of how the company would treat ALL employees within the workforce. Having a work environment that is supportive to a wide range of diversity creates a motivated workforce.

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STATEMENT OF

JOHN GAGE, NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

**SENATE COMMITTEE
ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

ON

**S. 1102, THE DOMESTIC PARTNER BENEFITS AND
OBLIGATIONS ACT OF 2009**

OCTOBER 15, 2009

Mr. Chairman and Members of the Committee: My name is John Gage and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the members of our union, which represents more than 600,000 federal employees, I submit this statement for the record of the Committee on Homeland Security and Governmental Affairs hearing on S. 1102, the Domestic Partnership Benefits and Obligations Act of 2009, held on October 15, 2009. S. 1102 would provide the same-gender domestic partners of federal employees the same benefits available to spouses of married federal employees. AFGE strongly supports the measure.

This legislation is about equity. It is not, as its opponents try to argue, about providing any form of special preference or extra benefit for federal employees who have formalized their exclusive relationships with a same-gender domestic partner as compared with those who marry a person of a different gender. Although earlier this year President Obama directed federal agencies to extend benefits to the same-sex domestic partners of federal workers, current law prevents the extension of benefits of great importance to federal workers, such as health and life insurance. The statutory equalization of benefits under S. 1102 would extend to health insurance under the Federal Employees Health Benefits Program (FEHBP), retirement benefits, rights under the Family and Medical Leave Act (FMLA), life insurance under the Federal Employees Group Life Insurance (FEGLI) plan, workers' compensation, death and disability benefits, and reimbursement benefits for relocation, travel, and related expenses. Further, the biological and adopted children of the domestic partner would be treated just like step-children of married federal employees under the benefits listed. Finally, under the legislation, same-gender domestic partners would be subject to the same anti-nepotism and financial rules and obligations as those that apply to married federal employees.

To become eligible for the equitable treatment provided for in the legislation, federal employees would be required to file legal affidavits of eligibility with the Office of Personnel Management (OPM) to certify that they share a home, and financial responsibilities. The employee must affirm the intention to remain in the domestic partnership indefinitely, and must notify OPM within thirty days if the partnership is dissolved. The provisions of the legislation would apply only to same-sex domestic partnerships.

The practice of treating married employees and those in committed same-sex partnerships equitably with regard to health insurance and retirement benefits is well-established in the private sector and in many state and local governments. More than half of the Fortune 500 firms extend equal benefits to spouses and same-sex domestic partnerships. They do so not only because it is fair and appropriate, but also because the market has made such policies an imperative in the competition to attract and retain excellent employees. The federal government should do no less. It should strive to attain the highest level of fairness for its employees, and it has a duty to all taxpayers to adopt employment

policies that facilitate the hiring and retention of a workforce of the highest possible quality.

The impending retirement of the baby boom generation of federal employees has raised the question of whether the federal government will be able to recruit the next generation, or whether the most desirable candidates for federal jobs will be lost to the private sector. Putting aside for a moment the still-enormous pay gap between the federal and non-federal sectors and the fact that FEHBP is poorly run and as a result costs both taxpayers and federal employees more than it should, there is the issue of equitable treatment of GLBT (gay, lesbian, bisexual and transgender) people. When the Human Rights Campaign released its 2006 study of the employment practices of Fortune 500 companies with respect to domestic partners, its president, Joe Solmonese, summarized the findings as follows: "Companies do it (provide equitable benefits to domestic partners) because it's good for business. American corporations understand that a welcoming environment attracts the best talent."¹

Refusal to provide equitable treatment with regard to the provision of employee benefits is a violation of the merit system principle that promises equal pay for substantially equal work. The economic value of family coverage for health insurance, survivor benefits for retirement, disability, workers' compensation, and life insurance; and full family coverage of relocation costs are substantial to a worker and would have extremely modest costs for the government. The equal pay principle has historically been understood to include all financial compensation, not just salary. Non-cash federal benefits make up almost a third of a typical federal employee's compensation. In many metropolitan areas, the salary gap between federal and non-federal jobs has actually grown in recent years so that it now stands at 22.97 percent on average nationwide. In the Washington-Baltimore locality, the remaining federal pay gap measured by the Bureau of Labor Statistics (BLS) is 36.6 percent. To exacerbate the challenge this poses to efforts by federal agencies to hire the next generation of federal employees by continuing to discriminate between married employees, and those in domestic partnerships is as irrational as it is unfair.

Imagine the perspective of a high-performing federal employee in a job that the federal government admits it has trouble recruiting for, who happens to have a domestic partner and two kids. Perhaps the worker is a Certified Registered Nurse Anesthetist in the VA, or a Defense Department Information Technology specialist with a high security classification, or an experienced DHS contract administrator with the proven ability to identify fraud on the part of contractors, or a skilled electrician who works on repair of highly complex weapons, or a Corrections Officer who puts his life on the line every day to keep us and his fellow officers safe from dangerous inmates in federal prisons. Consider that he

¹ "Majority of Large Firms Offer Employees Domestic Partner Benefits" by Amy Joyce, June 30, 2006, *The Washington Post*.

or she might have a co-worker with identical job responsibilities and performance who happens to have a spouse and a couple of kids.

Because S. 1102 is not yet law, the two workers will receive vastly different compensation in return for their work for the federal government. One would enjoy subsidized family coverage from FEHBP, worth approximately \$8,561.80 per year, and that subsidy is not taxed. The employee with the domestic partner and kids, in contrast, is eligible for only single coverage from FEHBP. As of 2008, the difference between what the government pays for FEHBP for family versus single coverage is \$4,790.76 per year. To obtain similar insurance for his family, the employee in the domestic partnership would have to pay at least the same \$4,790.76 per year in the open market, and the money spent on the premium would be tax deductible, but not tax free.

A married federal employee with two children who dies early leaves his or her survivors with benefits ranging from \$12,432 to \$38,628 per year depending upon his or her salary. In identical circumstances, the survivors of a federal employee with a domestic partner and two children are left with nothing. If an employee in a domestic partnership becomes disabled, the worker is eligible for anywhere from \$7,932 to \$21,852 depending on age, earnings, and the severity of the disability. But if the employee were married with children and had the exact same age, earnings, and severity of disability, his or her disability eligibility would range from \$11,640 to \$32,964.

The difference between the retirement annuities of employees with and without survivor designations vary widely on the basis of length of service, age at retirement, high-three salary, and retirement system. The two major federal retirement systems, the Civil Service Retirement System (CSRS), and the Federal Employees Retirement System (FERS) both allow married federal employees to ensure that their survivors continue to receive benefits after they die. The employee is required to take a reduction in the amount of his or her annuity in order to "buy" this survivor protection, but in most cases, taking the survivor option costs the employee about half of the value of benefits received by the survivor.

FERS provides two options for survivor annuities, either one half or one fourth of the value of the annuity. CSRS is a bit more complicated, allowing 55 percent of anything from the full annuity to 55 percent of one dollar of annuity. CSRS and FERS also allow survivor annuities to be paid to more than one former spouse at a time, as well as a widow or widower. (It is therefore difficult to argue that current law is based upon a religious concept of marriage or a view that marriages are more stable than domestic partnerships). The important point is that the financial value of survivor annuity benefits is substantial, and is, for the vast majority of federal employees who earn a full retirement annuity after a career of federal service, the single largest component of compensation after salary and their own annuity. This inequity in the treatment of a federal

employee's survivors is the most severe and the most indefensible. After all, even the most ardent opponent of equality might feel shame at depriving an elderly surviving domestic partner the survivor benefits available to an elderly surviving husband or wife.

How can anyone square these facts with the merit system principle of equal pay for substantially equal work?

The answer is that one cannot justify discriminating against federal employees who are in domestic partnerships versus federal employees who are in conventional marriages. All else equal, sexual orientation should not form the basis of discrimination in compensation. But unless and until S. 1102 becomes law, discrimination in compensation will continue to occur in the federal government. I am certain that the Committee on Homeland Security and Governmental Affairs will continue its effort to ensure that S. 1102 will apply as intended to federal worker benefits laws.

Of course, passage of S.1102 is not just a matter of fairness. It is also a matter of what is necessary for the federal government to succeed in recruiting the next generation of government employees, and to retain them once they form monogamous relationships and start families. There will be no reason to stay with the government when other employers, whose mission can be just as compelling as the government's, offer higher salaries and more comprehensive benefits.

Employees who do stay and are affected by the inequity will understandably feel the pain of this discrimination, and it will inevitably affect their morale and commitment to their agency's mission. They will know that they are receiving far less compensation for their work than their married coworkers, and have every reason to feel resentment at the inequity.

Cost cannot serve as a valid rationale for failure to pass this legislation, as the Congressional Budget Office (CBO) has calculated that enactment would add less than one half of one percent to the existing costs of these programs. That estimate excludes the cost of turnover, recruitment, and training when experienced federal employees leave federal service because of this inequity. The cost should be viewed as if it were simply the case that larger numbers of federal employees began to marry. Surely the Congress would not respond to this by abolishing the benefits currently extended to spouses and families. As such, no one should argue that the happy occasion of the formation and maintenance of families is unaffordable or insupportable for the United States government. This concludes my statement.



American Foreign Service Association
2101 E Street NW Washington, DC 20037 (202) 338-4045
FAX (202) 338-6820 E-mail afsa@afsa.org

October 14, 2009

The Honorable Joseph I. Lieberman
Chairman
Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lieberman,

On behalf of the American Foreign Service Association (AFSA), I write in strong support of S. 1102, the Domestic Partnership Benefits and Obligations Act. This important legislation would provide health care, retirement, and other benefits to all federal civilian employees with qualifying same-sex domestic partners on the same basis that benefits for current spouses are provided.

Members of the Foreign Service face many challenges when they are serving overseas that other federal employees do not encounter. We applaud Secretary Clinton's recent announcement that same-sex domestic partners will have access to language training, moving expenses, and the cost of emergency evacuation. However, same-sex domestic partners still do not have access to the Federal Employee Health Benefits Program, the Family Medical Leave Act, and retirement and pension benefits, which remains as a continuing injustice to our members. S. 1102 would provide these benefits to the same-sex domestic partners, while requiring domestic partners to have the same obligations under federal law.

AFSA is firmly committed equality and to equity, and S. 1102 translates these principles into concrete action that demonstrates fairness for federal employees and their same-sex partners. It is time for the U.S. Government to join the majority of the Fortune 500 companies and to provide these benefits, honor its workforce, and ensure the highest quality workforce. AFSA strongly supports S. 1102, and believes it is time for its adoption as law of the land.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Rockwell Johnson".

Susan Rockwell Johnson
President



Gerald W. McEntee
President
William Lucy
Secretary-Treasurer
Vice Presidents
Ken Allen
Portland, OR
Henry L. Bayer
Chicago, IL
George Boncoraglio
New York, NY
Anthony Caso
Boston, MA
Greg Develoux
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Denny Donohue
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David R. Hillman
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Michael Fox
Harrisburg, PA
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Detroit, MI
Raglan George Jr.
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Sherry Gordon
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Danny J. Homan
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John A. Lyall
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Chicago, IL
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Baltimore, MD
Veronica Montgomery-Cossa
New York, NY
Doug Moore
San Diego, CA
Michael D. Murphy
Madison, WI
Henry Nicholas
Philadelphia, PA
Eddie L. Parks
Westerville, OH
Randy Pereira
Honolulu, HI
George E. Pappack
Oakland, CA
Greg Powell
Austin, TX
Laura Reyes
San Diego, CA
Eddie Rodriguez
New York, NY
Lawrence A. Roehrig
Lansing, MI
Joseph P. Rugola
Columbus, OH
Kathy J. Sackman
Pomona, CA
Ellot Seide
South St. Paul, MN
Mary E. Sullivan
Albany, NY
Brauko Torres
San Juan, PR
David Warrick
Indianapolis, IN
Jeannette D. Wynn
Tallahassee, FL

October 30, 2009

Members of the Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the 1.6 million members of the American Federation of State, County and Municipal Employees (AFSCME), I would like to express our support for the Domestic Partnership Benefits and Obligations Act of 2009, (S. 1102). The bill will provide federal employees who have same-sex domestic partners the same employment benefits that are available to married federal employees and their spouses.

The typical American family has changed. In 1960, married couples with children comprised almost three-quarters of all U.S. households. Today, they account for only one in every four households. Households now include same-sex couples, unmarried opposite-sex couples and single parents. As the family make-up shifts, eligibility for federal employment benefits should be updated.

Most employers provide benefits, such as health, dental, vision, life insurance, and pension coverage, and offer optional coverage for spouses and children. In recent years, our members have benefited from the extension of benefits to same-sex domestic partnerships in hundreds of municipalities, and at least 15 states (Alaska, California, Connecticut, Illinois, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin), and the District of Columbia. While the number of employees who have applied for partner benefits has increased, enrollment has generally been very low and resulted in only marginal costs. These costs have been offset by the benefit of higher retention and recruitment rates for state and local employees.

President Obama signed a memorandum in June that gives same-sex domestic partners of federal employees access to long-term-care insurance benefits and allows civil servants to use sick leave to care for ailing domestic partners and children not related by blood or adoption. While this was an important step in the right direction, it does not replace the need for this bill.

Offering domestic partnership benefits is an important step for the federal government to take as it strives to be a needed employer and it will help the federal government attract new talent and retain existing employees. AFSCME strongly supports the S. 1102. We appreciate the committee's effort to move this bill forward and are happy to help in any way that we can.

Sincerely,

Charles M. Loveless
Director of Legislation

CML: adbr

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

October 27, 2009

William Burrus
President
(202) 842-4246

Honorable Joe Lieberman, Chair
Senate Committee on Homeland Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

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James "Jim" McCarthy
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Manley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Honorable Susan Collins, Ranking Member
Senate Committee on Homeland Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

On behalf of the 275,000 members of the American Postal Workers Union, I write to express support for S.1102, the "Domestic Partnership Benefits and Obligations Act of 2009."

Under the Act, as introduced, postal and federal employees who have same-sex domestic partners will be entitled to the same employment benefits that are available to married postal and federal employees and their spouses.

Postal and federal employees are eligible for retirement and disability benefits under either the Civil Service Retirement (CSRS) or the Federal Employees Retirement System (FERS). Both CSRS and FERS provide survivor benefits for the spouse and dependent children of a deceased federal employee or retiree.

Because postal and federal retirement benefits under both CSRS and FERS are subject to the statutory interpretation required by the Defense of Marriage Act in determining eligibility for survivor or dependent benefits under CSRS or FERS, "the word 'Spouse' refers only to a person of the opposite sex who is a husband or wife."




Honorable Joe Lieberman, Chair
Honorable Susan Collins, Ranking Member
October 27, 2009
Page Two

If S.1102 were to become law, employees and their domestic partners will have the same benefits as married employees and their spouses.

During a recent national convention of the APWU, delegates considered and voted overwhelmingly to support Resolution 186-C, which supports the recognition of civil unions of postal and federal employees. We feel that passage of S.1102 would comply with the intent and interests of APWU members.

We thank you for your introduction of this important bill and pledge our support of its passage.

Sincerely,



William Burrus
William Burrus
President

Statement for the Record

Donna Griffin
Senior Vice President & Chief Diversity Officer
The Chubb Corporation

Committee on Homeland Security & Government Affairs,
United States Senate

The Hon. Joseph Lieberman, Chair

Hearing entitled,

***“Domestic Partner Benefits:
Fair Policy and Good Business for the Federal Government”***

October 15, 2009

On behalf of The Chubb Corporation, one of America's leading diversified-financial corporations, I would like to express our support for S 1102, legislation introduced by Senator Lieberman and 24 co-sponsors to extend Domestic Partner benefits for Federal employees. We applaud the Committee for holding this hearing. As Chubb's Chief Diversity Officer, I appreciate the opportunity to provide this statement for the Congressional Record and to share with you some of the ways in which having DP benefits has enhanced our ability to attract and retain some of the best and brightest employees in the financial services industry.

As part of our longstanding commitment to workplace fairness, Chubb has offered a robust menu of life, health (medical & dental) and disability benefits to the Domestic Partners – and the children of Domestic Partners – of our employees since 1996. When the program was first introduced, 88 employees (out of a universe of approximately 8,000) signed up. By 2001, that number had risen to 128 (29 same-sex couples; 99 opposite-sex couples). In 2002, 150 employees (31 same-sex couples and 119 opposite sex couples) had enrolled in the program. By 2008, 255 employees (60 same-sex couples and 195 opposite sex couples) had signed up. We can only anticipate that these numbers will continue to grow in the years ahead.

You may wonder why, since we feel this is such an important cornerstone of our benefits portfolio, so few employees have taken advantage of the coverage since it was first introduced at Chubb over 10 years ago. There are myriad reasons for this trend; but the main one is, we believe, the unfortunate fact that under current Federal law, the value of employer-provided health coverage attributable to an employee's non-spouse, non-dependent beneficiary (such as a Domestic Partner or certain grown children covered under a parent's plan) is included in the taxable income of the employee and in the employee's wages for payroll tax purposes. This results in higher income and payroll taxes for these employees than for employees with spousal or dependent coverage (where the value of the coverage is not regarded as taxable income or wages.)

Bi-partisan, bi-cameral legislative proposals introduced this year – S 1153 by Senator Charles Schumer; and HR 2625 by Representative Jim McDermott – would amend the U.S. tax code so that DP benefits offered to eligible beneficiaries under employer health plans will not generate taxable income or taxable wages. Chubb is a strong supporter of both S 1153 and HR 2625, and we are working with a coalition of like-minded companies to end the "double-taxation" of DP benefits.

Diversity is about recognizing, respecting and valuing differences. We realize the challenges involved in integrating and valuing diversity in its many shapes, and are committed to fostering an environment in which all employees can realize their fullest potential. We believe that Chubb benefits from the competitive advantage such diversity provides. We pride ourselves on being a great place to work, as evidenced by the many workplace awards we have received, which are listed in an attachment to this Statement.

Enhancing our work environment by broadening our benefits programs and celebrating the diversity of our workforce has not been a financial burden to Chubb. On the contrary, we believe that our approach actually strengthens our financial underpinnings, by enabling us to attract and retain a wide variety of talented employees at every level of the organization.

Businesses that drive away talented and capable employees are certain to lose their competitive edge, an outcome that we simply cannot afford to accept in today's competitive global marketplace. At Chubb, we are committed to providing equal employment opportunities to all employees and applicants based on job-related qualifications and ability to perform a job without regard to race, sex, color, religion, age, national origin, sexual orientation, gender identity or disability.

This commitment is reflected in the benefits plans we make available to our employees. In fact, many employees have, over the years, shared with me their observations of why they were attracted to Chubb over another employer. An oft-repeated theme in their comments is the quality and breadth of our benefits programs. Here are just a few such testimonials:

I'm a new hire with Chubb. One of the things that drew me to Chubb (besides the obvious advancement of my career and the chance to be a part of Chubb's position in the insurance industry) is Chubb's support for their gay and lesbian employees, through the employee group and domestic partner benefits.

I have had a successful and satisfying 12 year career with Chubb. [Even though I am leaving the organization,] I want to let you know how symbolically important it was for me--being in a branch--to know that DP benefits and an organization like GLEN exists at Chubb. Although I never utilized it, knowing it was there made me feel a great deal more welcome and secure, as I know it does for others in the branch world.

Addressing individual needs through domestic partner benefits, supporting a business ethic based on best business practice and a commitment to eliminate a discriminatory workplace, creates the strongest foundation of any company that I have worked for. Based on what I have heard from friends, family and colleagues, both within and external to the Insurance Industry, I have found nothing that compares. Chubb is truly the only company, during my employment experience that I can say I have been privileged to work for.

My partner works in another state and the choice of doctors in her plan is limited because of where we live. For us, choosing the Chubb-provided DPB will enable us to have more choices of health care providers that are local and familiar to us. I am proud of the stance Chubb has taken to provide DPB to all employees.

For most of the 12 years since Chubb began offering DPB, my partner (for the past 15 years) and I have not had the need to utilize them--but there have been two occasions which were exceptions. At one point, his employer was bought out by another company

and he was one of many employees that were laid off in the aftermath of that occurrence, leaving him unemployed for several months. At another time in his career, the only medical coverage plan his employer at the time offered was one which had a very high annual deduction (\$3-5,000 as I recall). My partner has various health issues which require ongoing prescriptions that would cost thousands of dollars each month if he had no medical coverage, and so the security of being able to add him to my coverage for brief periods of time was critical to both our financial and emotional well being. It is not too much of a leap to be able to see how important the availability of such benefits can be to an employee's overall productivity.

In the years since its implementation, our culture of inclusion and celebration of diversity in the workplace has been embraced broadly throughout the organization, and we believe this acceptance has had a positive impact on our Corporation's bottom line: we employ the best-qualified insurance professionals in the financial services industry, bar none. Their collective work ethic has helped make Chubb the 180th largest corporation in the U.S. (according to **Fortune** magazine). And it has further reinforced, for ALL of our employees, that fairness and non-discrimination remain fundamental tenets in our workplace.

I thank the Committee for the opportunity to share our views with you, and I hope you will give serious consideration to adding DP benefits to the constellation of benefits to which Federal employees can avail themselves. I truly believe that you will be rewarded with a more loyal and long-term employee universe, which as one of the country's largest public employers, you will agree is critical in today's competitive workplace.

We would be pleased to provide any additional information about our DP benefits program in which you might be interested as you move forward with your exploration of this important issue.

Thank you.



October 14, 2009

The Honorable Joe Lieberman
Chairman
Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Susan Collins
Ranking Member
Homeland Security and Government Affairs
United States Senate
Washington, D.C. 20510

Dear Senators Lieberman and Collins:

On behalf of Concerned Women for America's (CWA) 500,000 members nationwide, I urge you to oppose the Domestic Partnership Benefits and Obligations Act of 2009. This legislation would provide special privileges to "same-sex partners."

The Domestic Partnership Benefits and Obligations Act of 2009 allows any federal employee with a "same-sex domestic partner" to be entitled to the same employment benefits that are currently available to married federal employees and their spouses.

Under federal law, legal marriage is the union between a man and a woman. This bill would contradict existing law by elevating relationships outside of marriage to that of a binding legal marriage. Marriage between one man and one woman provides unique benefits to individuals, children, and society that cannot be replicated by any other living arrangement. The Domestic Partnership Benefits and Obligations Act of 2009 demeans the importance of marriage and is wholly inappropriate because it undermines federal law.

CWA urges you to oppose legislation that undermines longstanding federal law and to preserve the family values that are the backbone of this country.

Sincerely,

Wendy Wright
President

October 15, 2009

The Honorable Joseph Lieberman
 Chairman
 United States Senate Committee on
 Homeland Security and Governmental Affairs
 340 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Lieberman,

We, the undersigned organizations, write in support of the Domestic Partnership Benefits and Obligations Act, S. 1102. The Domestic Partnership Benefits and Obligations Act would provide health care, retirement and other benefits to all federal civilian employees with qualifying same-sex domestic partners on the same basis as spousal benefits. The Act also provides benefits for domestic partners' children, even if they are not the biological or adopted children of the employee.¹¹¹

Benefits currently afforded to married federal employees but denied to same-sex domestic partners include:

- Access to FEHBP health insurance;
- Pension and retirement benefits;
- Family relocation assistance;
- Family and medical leave;
- Compensation for work injuries;
- Death, disability and similar benefits; and
- Continued health coverage upon employee's termination (at own expense).

The Act also imposes equal obligations upon domestic partners, including the duty to disclose financial interests.

By offering full benefits to the domestic partners of federal employees, this bill will bring the federal government's employment practices in line with those of America's largest and most successful corporations. Fifty-nine percent of Fortune 500 companies provide domestic partner benefits to their employees. Many of America's leading companies, including defense giant Raytheon, IBM, Microsoft, Shell Oil, Walt Disney, Fannie Mae, Citigroup, Xerox, AOL Time Warner and United and American Airlines, offer these benefits. In addition, 22 states, the District of Columbia, and over 150 local governments make benefits available to public employees and their same-sex partners. These include cities in every part of the country, from Los Angeles to New York City, to Madison, Wisconsin and Iowa City.

In addition, by offering domestic partnership benefits, the federal government would not only improve the quality of its workforce, but also demonstrate its commitment to fairness and equality for all Americans. Benefits comprise a significant portion of all employee compensation. By not offering domestic partnership benefits to its employees, the federal government is not providing equal pay for the equal work of these employees. The legislation would also require domestic partners to have the same obligations under federal law.

¹¹¹ In most states, second-parent adoption is not available, and as a result, many children of same-sex couples cannot become legal children of both parents. The Act would provide coverage for these children on the same basis as stepchildren of married employees.

It is time for the federal government to have the ability to retain the best employees through giving equal treatment to its gay and lesbian employees in committed relationships. We therefore support the Domestic Partnership Benefits and Obligations Act.

Sincerely,

AIDS Action Council
American Civil Liberties Union (ACLU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees, AFL-CIO
American Foreign Service Association
CenterLink: The Community of LGBT Centers
Center for American Progress Action Fund
Family Equality Council
Federal GLOBE
Gays and Lesbians in Foreign Affairs Agencies (GLIFAA)
GLSEN - the Gay, Lesbian and Straight Education Network
GOProud
Human Rights Campaign
National Air Traffic Controllers Association
National Center for Lesbian Rights
National Coalition for LGBT Health
National Gay and Lesbian Task Force Action Fund
National Coalition for LGBT Health
National Treasury Employees Union (NTEU)
Parents, Families and Friends of Lesbians and Gays (PFLAG) National
People for the American Way
Pride at Work, AFL-CIO
Secular Coalition for America
Service Employees International Union (SEIU)

United States Senate
Committee on Homeland Security and Governmental Affairs
Hearing on
“Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government”
Written Testimony of Joe Solmonese
President, Human Rights Campaign
October 15, 2009

On behalf of the Human Rights Campaign and our over 750,000 members and supporters nationwide, I thank Chairman Lieberman for holding today’s hearing on S. 1102, the Domestic Partnership Benefits and Obligations Act (DPBO). I also want to thank Senator Collins, and Representative Tammy Baldwin for their leadership and commitment on this important legislation. As the nation’s largest civil rights organization advocating for the lesbian, gay, bisexual, and transgender (LGBT) community, the Human Rights Campaign strongly supports this legislation, which would ensure that lesbian and gay federal employees receive equal compensation for their service to our nation.

The DPBO Act would provide equal family benefits and obligations—including retirement benefits, health insurance, relocation expenses, and many more—to federal civilian employees with same-sex partners. This legislation, which is long overdue, would also bring the federal government up to the standards of America’s leading employers, who provide these benefits in order to recruit and retain the most talented workforce possible.

According to the Bureau of Labor Statistics, nearly 13 percent of employees’ compensation comes in the form of insurance and retirement benefits, which generally cover family members and dependents, and 7 percent in the form of paid leave, which makes it possible for workers to accommodate work and family obligations. Increasingly, America’s leading employers — including 59% of Fortune 500 companies, 22 states and hundreds of cities and counties — provide equal family benefits for their lesbian and gay workers.

The federal government—the nation’s largest civilian employer with 2.7 million employees—does not provide health, or retirement, expenses for the same-sex partners of its employees. Until recently relocation expenses were not covered at all. Now, they are available but only to the domestic partners of employees at the State Department. As a result, a lesbian or gay civilian employee doing the same job as their married heterosexual counterparts, in the same pay grade, will receive significantly lower compensation. Furthermore, because many companies that provide services to the government — such as top federal contractors Bechtel, Boeing, EDS, General Electric, Honeywell, Lockheed Martin, McKesson, Northrop Grumman, Raytheon and SAIC — offer equal benefits to their lesbian and gay employees, qualified lesbian or gay applicants have a strong incentive to choose the private sector over government work even where the positions are similar. While opponents of DPBO—including the Bush administration— have argued that fraud could be a problem in awarding these benefits,

the experience of these top contractors as well as hundreds of other Fortune 500 companies, and the support of Office of Personnel Management Director John Berry at today's hearing refute those unfounded concerns.

On June 17, 2009, President Obama reduced the inequities that lesbian and gay civilian employees, including Foreign Service Officers, face when he signed a Presidential Memorandum on Federal Benefits and Non-Discrimination. The Memorandum identified certain benefits that could be provided equally without congressional action. In particular, the Memorandum instructed the Director of the Office of Personnel Management (OPM) to add domestic partners of federal employees to the long-term care insurance program and require supervisors to allow employees to use their sick leave to take care of domestic partners and non-biological, non-adopted children.

The Memorandum also addressed the inadequacy of benefits for Foreign Service Officers with same-sex partners, an issue that drew public attention last year, when former Ambassador Michael Guest ended a distinguished career and called upon the previous administration to equalize benefits for same-sex partners. Foreign Service employees' same-sex partners will now have equal access to a number of the benefits afforded their colleagues such as the use of medical facilities at posts abroad, medical evacuation from posts abroad and inclusion in family size for housing allocations.

The President also instructed the heads of all other executive departments and agencies, in consultation with OPM, to conduct reviews of the benefits provided by their departments and agencies to determine what authority they have to extend benefits to the same-sex partners of their employees.

Although the Memorandum is an important step in providing same-sex partners of federal employees with the benefits already available to spouses of heterosexual employees, it does not approach providing a full range of benefits. Notably, it does not offer health insurance or retirement savings –the two most critical employee benefits – to the domestic partners of federal employees. The President acknowledged in the Memorandum that certain benefits could not be provided under existing laws and must be addressed legislatively. For this reason, the President announced his support for the DPBO legislation in order to ensure these critical benefits are provided. OPM Director John Berry reinforced the Administration's endorsement of the legislation when he testified on the House companion measure in July.

This hearing is an important step toward guaranteeing equal compensation for lesbian and gay workers serving our government at home and abroad. Equal pay for equal work is a value fundamental to American opportunity. The federal government should be the standard bearer for fair workplace practices, but has lagged behind the top employers for too long. By passing the S. 1102, Congress can bring the federal workforce into the 21st century, ensuring that all of its workers are treated fairly and that the best and brightest are attracted to federal service.

On behalf of the Human Rights Campaign, I urge you to pass the Domestic Partnership Benefits and Obligations Act.

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STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

October 15, 2009

to the

Committee on Homeland Security and
Governmental Affairs
United States Senate

on

S. 1102, the Domestic Partner Benefits and Obligations Act of 2009

Thank you Chairman Lieberman and Ranking Member Collins for this opportunity to present the views of the National Treasury Employees Union (NTEU) on S. 1102, the Domestic Partner Benefits and Obligations Act of 2009. NTEU is the nation's largest independent federal sector labor union, representing workers at 31 government agencies. For over 70 years our union has been in the forefront of defending and advancing better pay, benefits and working conditions for federal employees. I have had the honor of testifying before this Committee many times in the past on matters of concern to federal workers and I thank you for this most recent invitation.

NTEU is grateful to Senator Lieberman for introducing this bill, along with Senator Collins and the 23 other co-sponsors including our dear friend and the constant

advocate for human and civil rights, the late Senator Edward M. Kennedy. NTEU strongly supports the Domestic Partnership Benefits and Obligations Act and urges the Committee to act quickly and favorably on it.

Mr. Chairman, under this legislation, NTEU members and all federal workers with domestic partners will be able to participate in employee benefit programs similar to the options allowed for married couples and will be subject to the same employment related obligations and duties that are imposed on married employees and their spouses. This includes the Federal Employees Health Benefits Program (FEHBP), retirement and disability plans, family, medical and emergency leave, Federal Group Life Insurance (FGLI), long term care insurance, Workers Compensation, death and disability benefits, and relocation, travel and related expenses.

The legislation would require federal employees and their domestic partners to be subject to the same duties, obligations and ethics requirements that married federal employees are mandated to follow such as anti-nepotism rules and financial disclosure requirements. The legislation would further allow counting both partners income for means tested, contractually negotiated child care subsidies offered by federal agencies. Mr. Chairman, I want to emphasize this point. This legislation proposes both benefits and obligations. The integrity of the civil service system demands not only that there be fairness in benefits but that nepotism and other abuses not be permitted because of an exemption of domestic partners.

The legislation would deem a person a domestic partner when the employee files an affidavit with the Office of Personnel Management (OPM) that certifies they have a common residence, share responsibility for each other's welfare and financial responsibilities, are not related by blood and are living together on an indefinite basis as each other's sole committed partner. This seems reasonable to us, given the only other likely alternative would be to defer to state law. The various states have such widely different definitions of domestic partners or civil unions, with four states having same sex marriage and several states having no partnership provisions at all, it would be unwieldy for the federal government to use state definitions given the lack of uniformity among the states.

Mr. Chairman, there has long been a very sound principle that has been embraced on a bipartisan basis. That principle is that fair and comprehensive employee benefits in our society are best promoted by the federal government operating as a model employer. Then, the private sector is encouraged but not mandated to adopt these benefits by the good example and the resulting market forces of the nation's largest employer. In this situation, we are seeing the reverse. The federal government is no longer in the forefront but is a laggard. Over 53% of Fortune 500 companies offer domestic partner benefits to their workers. Many public employers offer domestic partner benefits, including 13 states along with 201 local governments. In fact, tens of thousands of private companies, growing numbers of non-profit employers including colleges and universities, and the very entities that are competing with the federal government for the recruitment of the

best and brightest of the workforce are offering domestic partner benefits. Market forces and the good example of the private sector now put this issue before the federal sector.

As the exclusive bargaining representative for over 150,000 federal employees, NTEU is usually the first to hear from those we represent about pay, benefits and working conditions. NTEU union leaders across the country have been aware of the desire and need for these benefits by our members for many years. It is a concern that NTEU members raise frequently at union meetings, conferences and in direct inquiries. We have discussed and debated this issue at our National Conventions, passing resolutions in support at every National NTEU Convention going back more than a decade. And increasingly, particularly among new hires, it is not only desire and need but there is an expectation of domestic partner benefits from NTEU members who have received these benefits in the private sector.

I want the members of the Committee to understand that the federal employee support for domestic partner benefits is broad and nationwide. I have heard from a National Park Service employee in West Virginia, an FDIC bank examiner in West Warwick, Rhode Island, a worker at the IRS Service Center in Ogden, Utah, a Customs and Border Protection officer serving on the Mexican border in California and a Social Security Administration employee in Cleveland, Ohio, all of whom have asked if the union can have domestic partner benefits extended to the federal sector. I also want to note that, with some very limited exceptions, domestic partner benefits are not something NTEU can negotiate in collective bargaining. To the degree we can, NTEU is committed

to do so. But we are generally in the situation of having to inform our members that this matter needs to be addressed legislatively. Congress must act and it must act promptly.

There is another reason why it is so important for Congress to move favorably and quickly on this legislation. As has been noted by members of this Committee, we have a coming human capital crisis in the federal government. As has been reported by the Office of Personnel Management and as I have previously testified before Congress, more than half of the federal government's employees will become eligible for retirement in the next ten years and approximately 40 percent of the federal workforce is expected to retire. In the next five years alone it will be 30% of the workforce – 600,000 individuals. This coming crisis is so severe, the Chief Human Capital Officers Council has taken up the matter and, working with Federal agencies, begun developing the best practice models for hiring and succession planning. I have previously testified that OPM needs to step up its marketing and outreach particularly to younger workers. I also testified that the looming crisis is not just a matter of retiring senior employees where the response can be moving those next in line up the food chain and stepping up entry level hires. The federal government did very little hiring in the 1990's while at the same time, the federal workforce was reduced by about 400,000 workers. We're not only losing the senior layer of the workforce in the next 10 years. There is no one behind them to do the jobs. Mid-career, mid-level candidates need to be attracted to federal service and many of the quality candidates for these positions are part of a settled domestic partner couple.

Given this reality, it is simply unacceptable that the federal government be unable to offer benefits as good or better than the private firms the government is competing with. It will lose the best candidates in many different circumstances. Most obviously, it is a desirable recruitment tool for an employee with a partner not in the labor force or in a job that does not offer health insurance. Also, with this huge need for recruitment coupled with the goal of not compromising on the quality of employees, this legislation is one obvious tool in casting the widest net possible to find the best candidates. Particularly among jobs requiring highly skilled and specialized candidates, that means a national search and asking applicants to re-locate. It might mean persuading a trademark attorney at General Electric in Connecticut to come to the Patent and Trademark Office in Alexandria, Virginia or a chemist from Eli Lilly to take a job at the Food and Drug Administration laboratory in Cincinnati or Boston. It might be a tough sell for a married couple but at least the agency can offer relocation and related expenses and at least the non-federal spouse can participate in the health insurance plan while searching for a new job in the new location. To ask a highly qualified candidate to re-locate and to expect the candidate's domestic partner to leave his or her employment and employer sponsored health insurance to move to a new city is simply a recipe to miss out on the best and most able candidates.

In summary, Mr. Chairman, the Committee has before it a bill that represents fairness and equality for gay and lesbian employees, is desired and even demanded by federal employees, is a recruiting tool for agencies in the looming retirement crisis in the federal sector and will extend health care and other benefits to Americans currently uncovered. I can not see why the Senate would not act favorably and quickly. I urge that you do.



**Statement of PFLAG National Executive Director Jody Huckaby
In Support of the Domestic Partnership Benefits and Obligations Act of 2009
for the Hearing: *The Domestic Partnership Benefits and Obligations Act*
October 15, 2009**

Mr. Chairman and Members of the Committee:

On behalf of Parents, Families and Friends of Lesbians and Gays' (PFLAG) more than 200,000 members and supporters, we thank you the opportunity to submit written testimony supporting the *Domestic Partnership Benefits and Obligations Act of 2009 - S. 1102*. We also extend our thanks to Chairman Lieberman and Ranking Member Collins for convening the hearing on *The Domestic Partnership Benefits and Obligations Act* before the United States Senate Committee on Homeland Security and Governmental Affairs. PFLAG encourages the Congress to enact legislation to extend equal benefits and compensation to all federal employees. It is absolutely critical for the Committee to discuss the important role equal benefits and compensation play for all federal employees, their spouses and their families.

Problem Statement and Background Information

Employee benefits, including health insurance and retirement savings, represent a significant portion of employee compensation. Although the federal government - the nation's largest civilian employer - offers generous family benefits to employees, these benefits are not available lesbian, gay and bisexual workers with same-sex partners. As a result, these employees do not receive equal pay for their equal work. This means that the government cannot keep pace with leading private-sector employers - including many federal contractors - in recruiting and retaining top talent.

Current Gaps in Federal Law

Although President Obama's recent Presidential Memorandum on Federal Benefits and Non-Discrimination extended some benefits to federal employees' same-sex partners, it did not go far enough to extend equal benefits comparable to those benefits received by federal employees with opposite-sex spouses. Benefits currently afforded to married federal employees but denied to same-sex domestic partners include:

- Access to health insurance through the Federal Employees Health Benefits Program;
- Pension and retirement benefits;
- Family relocation assistance;
- Language training, evacuation services, health care, and anti-terrorism training for Foreign Service officers' families;
- Family and medical leave; and
- Continued health coverage upon employee's termination (at own expense).

Parents, Families and Friends of Lesbians and Gays (PFLAG) You Have a Home in PFLAG
1726 M Street, NW Suite 400 Washington, DC 20036 Voice: (202) 467-8180 Fax: (202) 467-8194 Web: www.pflag.org



The Domestic Partners Benefits and Obligations Act of 2009

The Domestic Partnership Benefits and Obligations Act of 2009 would provide health care, retirement, and other similar benefits to all federal civilian employees with qualifying same-sex domestic partners on the same basis as spousal benefits. The Act also provides benefits for domestic partners' children, even if they are not the biological or adopted children of the employee. The Act also imposes equal obligations upon domestic partners, including the duty to disclose financial interests.

By offering full benefits to the domestic partners of federal employees, this bill will bring employment practices in the federal government in line with those of America's largest and most successful corporations. Fifty-seven percent of Fortune 500 companies provide domestic partner benefits to their employees. Many leading companies in the United States, including defense giant Raytheon, IBM, Microsoft, Shell Oil, Walt Disney, Fannie Mae, Citigroup, Xerox, AOL Time Warner, and United and American Airlines offer these benefits. Nineteen states and more than 150 local governments offer their domestic partnership benefits to their public employees. These include cities in every part of the country, from Los Angeles and New York City, to Madison, Wisc., and Iowa City, Iowa.

By offering domestic partnership benefits, the federal government would not only improve the quality of its workforce, but also demonstrate its commitment to fairness and equality for all Americans. Benefits comprise a significant portion of all employee compensation. By not offering domestic partnership benefits to its employees, the federal government is not providing equal pay for the equal work of these employees. The legislation would also require domestic partners to have the same obligations under federal law.

PFLAG's Unique Role

Parents, Families and Friends of Lesbians and Gays (PFLAG) seeks to promote the health and well-being of lesbian, gay, bisexual and transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. PFLAG provides opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity.

PFLAG remains committed to promoting the health and well-being of LGBT individuals by influencing policy and legislation aimed at recognizing same-sex relationships. That is why so many PFLAG parents, families and friends, who understand the importance of employee benefits, continue to work in their local communities to identify innovative ways to move local governments and businesses to provide equal benefits and compensation for gay, lesbian and bisexual employees with same-sex partners.

It is time for the federal government to be able to retain the best employees by giving equal treatment to its gay and lesbian employees in committed relationships. We hope the leadership of the U.S. Congress will take action by moving equality forward. We encourage you to meet with PFLAG members and supporters along with the staff members in our national office who continue to advocate for domestic partner benefits at the local, state and federal level for both public and private employees. We believe

Parents, Families and Friends of Lesbians and Gays (PFLAG) You Have a Home in PFLAG
1726 M Street, NW Suite 400 Washington, DC 20036 Voice: (202) 467-8180 Fax: (202) 467-8194 Web: www.pflag.org



these personal accounts will be enormously helpful in your efforts to make a difference in the lives of all hard-working Americans.

Again, we thank you for holding this important hearing and for the opportunity to submit written testimony supporting *The Domestic Partnership Benefits and Obligations Act of 2009*. On behalf of all of our members and supporters, we are grateful for your dedicated work in helping create equal workplaces for all Americans. If you have any questions related to our ongoing work, please be sure to contact our Field and Policy Manger, Rhodes Perry at 202-467-8180 x 221 or rperry@pflag.org.

Sincerely,

A handwritten signature in cursive script that reads "J Huckaby".

Jody M. Huckaby
Executive Director
PFLAG National

Parents, Families and Friends of Lesbians and Gays (PFLAG) You Have a Home in PFLAG
1726 M Street, NW Suite 400 Washington, DC 20036 Voice: (202) 467-8180 Fax: (202) 467-8194 Web: www.pflag.org

**Prepared Statement of the Teachers Insurance
and Annuity Association-College Retirement
Equities Fund (TIAA-CREF)**

Mr. Chairman, since your Committee held a hearing on your legislation to provide benefits to the domestic partners of federal employees (The Domestic Partner Benefits and Obligations Act, S. 2521), TIAA-CREF wanted to submit this statement for the record about our own experience with domestic partner benefits.

TIAA-CREF is a national financial services organization that manages over \$390 billion in assets for more than 3.4 million clients. We are the leading retirement system for academic, research, medical and cultural institutions. The issue of domestic partner benefits is an important one for us, but also for our client institutions and our plan participants.

TIAA-CREF began offering domestic partner benefits in January 2004. These benefits are offered to same-sex partners, and include all health benefits, such as medical, dental and vision coverage. We offer these benefits to compete effectively in the marketplace for talent and to retain valuable employees in our company. Since the majority of Fortune 500 companies now offer these benefits, those firms that do not are at a competitive disadvantage when hiring qualified candidates. We believe that employees deserve equitable treatment, and offering domestic partner benefits is in keeping with our commitment to provide benefits fairly across our employee population. The response from our workforce has been extremely positive and we have found that offering domestic partner benefits have enabled us to attract and retain a highly-qualified workforce.

Our experience with our domestic partner benefit program is that costs and administration do not diverge appreciably from that of our general population. We have seen no evidence that the claims experience differs within this group, nor do we see any suggestion that otherwise ineligible individuals are benefiting improperly from this program.

One challenge we encounter in administering our domestic partner benefits program is caused by the inequity in the federal tax treatment of such benefits. For those who do not qualify as spouses or dependents under the Internal Revenue Code, such as domestic partners, the value of these benefits is treated both as taxable income to the employee and as wages subject to payroll taxes. Yet, such benefits to spouses and dependents are excludible from income and payroll tax. This creates the need internally for additional systems to track the tax withholding for affected individuals. A greater challenge is communicating the inequity to employees and managing the outcome. Senator Schumer, along with others, have introduced legislation to provide equal tax treatment for health benefits offered to any eligible beneficiary under an employer health plan (S. 1153, The Tax Equity for Domestic Partner and Health Plan Beneficiaries Act). We would like to see S. 1153 enacted into law, so that all employees may benefit from equal treatment for domestic partner benefits under the tax code.

Domestic partner benefits are an integral part of our recruitment and retention strategy at TIAA-CREF. The costs and administration of our program are in line with commensurate benefits offered to employees with traditional family structures. Correcting the federal tax inequities would address the primary challenge for these benefit programs. Thank you for your significant legislative efforts to promote these benefits and for the opportunity to submit our views.

