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Office of the General Counsel

B-275860

January 31, 1997

The Honorable Henry J. Hyde  
Chairman, Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

The Defense of Marriage Act,<sup>1</sup> which became law on September 21 of last year, defines "marriage" as "a legal union between one man and one woman as husband and wife"; similarly it defines "spouse" as referring "only to a person of the opposite sex who is a husband or a wife." Because the Act makes both definitions apply "[i]n determining the meaning of any Act of Congress," it potentially affects the interpretation of a wide variety of federal laws in which marital status is a factor.

In connection with the enactment of the Defense of Marriage Act, you asked us, in your September 5, 1996, letter, to identify federal laws in which benefits, rights, and privileges are contingent on marital status. Your staff agreed that we should identify more generally all those laws in the United States Code in which marital status is a factor, even though some of these laws may not directly create benefits, rights, or privileges.

To find laws that meet these criteria, we conducted searches for various words or word stems ("marr," "spouse," "widow," etc.), chosen to elicit marital status, in several electronic databases that contain the text of federal laws. From the collection of laws in the United States Code that we found through those searches, we eliminated (1) laws that included one or more of our search terms but that were not relevant to your request<sup>2</sup> and (2) as agreed with your staff, any laws enacted after the Defense of Marriage Act. The result is a

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<sup>1</sup>Public Law 104-199, 110 Stat. 2419.

<sup>2</sup>For example, our search for the word stem "marr," designed to capture words such as "marriage" and "marry," also produced references to laws mentioning bone marrow transplants, the city of Marrakesh, and proper names containing the letters "marr."

collection of 1049 federal laws classified to the United States Code in which marital status is a factor.

This collection of laws is as complete and representative as can be produced by a global electronic search of the kind we conducted, but such a search has several limitations. Most significantly, it cannot capture every individual law in the United States Code in which marital status figures. However, we believe that the probability is high that it has identified those *programs* in the Code in which marital status is a factor.

Because of the inherent limitations of any computer search<sup>3</sup> and the many ways in which the laws in the United States Code may have dealt with marital status, the only way to create an exhaustive list of laws in the Code implicating marital status would be to read and analyze the Code in its entirety. We believe that such an effort would not generate substantially more useful information than we have provided here.

A second caveat concerning our data is that they include only laws classified to the United States Code. As you know, the Code is a compendium of "general and permanent" laws. Although appropriations and annual authorizations, for example, might contain references to marital status, they are typically in effect for a single year, and therefore do not appear in the Code.

Finally, no conclusions can be drawn, from our identification of a law as one in which marital status is a factor, concerning the effect of the law on married people versus single people. A particular law may create either advantages or disadvantages for those who are married, or may apply to both married and single people. For example, those who are unmarried fare better than their married counterparts under the so-called marriage penalty provisions of the tax laws, while married couples enjoy estate tax benefits not available to the unmarried. Other laws apply both to married and single people by virtue of terms like "survivors," "relatives," "family," and "household."

The raw data produced by our searches were in a form that made them unwieldy and difficult to use. One reason for this is the sheer number of individual laws that we identified. Also, we conducted multiple searches in several databases, resulting in several separate lists in varying formats. Finally, the laws on the lists were organized as they are in the United States Code; for a reader attempting to understand what kinds of laws make

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<sup>3</sup>One such limitation results from the use of statutory definitions. Our search for occurrences of "spouse" would find a law defining "relative," for purposes of a program, as including a spouse. It would not find the laws in that program that, by referring to "relative," apply to a spouse. A search for "relative" does not solve this problem. That word is used commonly in senses unrelated to marital status (as are other terms such as "single"). A computer cannot distinguish between these senses; a lawyer would have to examine each occurrence of "relative" to determine whether it refers to marital status.

marital status a factor, that organization is not consistently helpful. Some of the Code's 50 titles contain laws on seemingly unrelated subjects. Title 42, under the broad designation "The Public Health and Welfare," includes laws ranging from Social Security to nuclear waste disposal to civil rights and privacy protection. Conversely, closely parallel provisions may appear in different titles: benefits for most federal civil servants are in Title 5, Government Organization and Employees, but similar provisions for Foreign Service officers are in Title 22, Foreign Relations and Intercourse.

To give readers a sense of the kinds of federal laws in which marital status is a factor, we classified the laws on the list into the following 13 categories<sup>4</sup>:

- Social Security and Related Programs, Housing, and Food Stamps
- Veterans' Benefits
- Taxation
- Federal Civilian and Military Service Benefits
- Employment Benefits and Related Laws
- Immigration, Naturalization, and Aliens
- Indians
- Trade, Commerce, and Intellectual Property
- Financial Disclosure and Conflict of Interest
- Crimes and Family Violence
- Loans, Guarantees, and Payments in Agriculture
- Federal Natural Resources and Related Laws
- Miscellaneous Laws

While we believe this classification scheme is useful for organizing the hundreds of statutes on the list, and for representing the range of federal programs and activities in which the law makes marital status relevant, it should not be regarded as definitive. Other ways of categorizing these laws would be equally valid. Moreover, the categories we use are not mutually exclusive: many laws could arguably be in a different category. A general description of each category and a few examples of the laws it contains are in enclosure I. The full lists of statutes in each category are in enclosure II.

As arranged with your staff, unless you announce its contents earlier, we plan no further distribution of this letter for 7 days after its issue date. At that time, we will make copies available on request.

If you have any questions, please call me at (202) 512-8203 or Susan Poling, Assistant General Counsel, at (202) 512-2667.

Sincerely yours,

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<sup>4</sup>The order of the categories is not significant, except that the first four are those in which marital status is most pervasive, and are the largest.

Barry R. Bedrick  
Associate General Counsel

Enclosures - 2

## Categories of Laws Involving Marital Status

### CATEGORY 1—SOCIAL SECURITY AND RELATED PROGRAMS, HOUSING, AND FOOD STAMPS

This category includes the major federal health and welfare programs, particularly those considered entitlements, such as Social Security retirement and disability benefits, food stamps, welfare, and Medicare and Medicaid.<sup>1</sup> Most of these laws are found in Title 42 of the United States Code, The Public Health and Welfare; food stamp legislation is in Title 7, Agriculture.

In many of these programs, recognition of the marital relationship is integral to the design of the program. For example, the law establishing the Old Age, Survivors, and Disability Insurance (OASDI) program (Social Security) is written in terms of the rights of husbands and wives, and widows and widowers. Once the law sets forth the basic right of an individual participant to retirement benefits, it prescribes in great detail the corresponding rights of the current or former spouse. Whether one is eligible for Social Security payments, and if so how much one receives, are both dependent on marital status. This is reflected in the provisions for what happens upon the death of a beneficiary: if certain conditions are met, then a spouse or a divorced spouse (as well as a widow or widower) has a right to payments based on the marriage, rather than on his or her own earnings.

The part of the Social Security Act that governs the OASDI program is unusual in that, unlike many other laws we have identified, it defines the terms "husband" and "wife." It does so in terms of state law: a person is the wife or husband of an insured individual for purposes of OASDI if "the courts of the State [of domicile] ... would find that such applicant and such insured individual were validly married ..." or, if not, that under the state's laws of intestate succession, the person would have the same status with respect to the individual's property as a wife or husband, widow or widower. Those 65 or older who are eligible for Social Security retirement benefits, or who have received Social Security disability benefits for at least 2 years, are also eligible for benefits under Medicare.

The Social Security Act also authorizes the Supplemental Security Income (SSI) program, for the needy aged, blind, and disabled. Under SSI, both the level of income to determine eligibility and the level of benefits for those who are eligible differ, depending whether the applicant has an eligible spouse or not. SSI defines "eligible spouse" as an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual. The SSI law goes on

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<sup>1</sup>The recently enacted welfare reform bill, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, greatly affected some of the provisions in this category, but the changes are not generally effective until July 1997. Where both the old and new provisions appear in the United States Code, we have included both—the ones in effect until July 1997 and the ones that take effect thereafter—in Enclosure II.

to say that, in determining whether two individuals are husband and wife, state law will generally apply, except that if a man and a woman have been determined to be husband and wife for purpose of OASDI or, if a man and woman are found to be holding themselves out to the community as husband and wife, they are also husband and wife for purposes of SSI.

Child support enforcement is another program, also established under the Social Security Act, that contains provisions affecting spouses. Its purpose is to provide help (1) in enforcing the support obligations of absent parents to their children and to the spouse with whom the children may be living, and (2) in obtaining child and spousal support. If an obligation has been established under state law for one spouse to support another, and if the supported spouse is receiving assistance under Medicaid (see below) or AFDC (Aid to Families with Dependent Children), then a state participating in the child support enforcement program must help enforce the support obligation.

Medicaid is a jointly funded federal-state entitlement program to provide medical assistance to qualifying low-income people, including those eligible for AFDC<sup>2</sup> and SSI, non-AFDC low-income children and pregnant women, and low-income Medicare beneficiaries. In determining a person's eligibility for Medicaid based on income, states may consider the spouse's financial responsibility for the person, but may not consider anyone else's financial responsibility. Spouses are considered "essential" to individuals receiving Medicaid benefits, and are therefore eligible for medical assistance themselves. The Medicaid statute also prescribes how to account for the income and resources of the spouse of an institutionalized person, for purposes of determining that person's eligibility for benefits.

In the broad federal program of housing assistance for low-income families the definition of "families" takes marital status into account. For some purposes, the term means families whose heads, or their spouses, are elderly, near-elderly, or disabled. However, the same provision includes a definition of families—"2 or more elderly persons, near-elderly persons, or persons with disabilities living together"—that does not require any marital relationship. The same law makes marital status a factor in determining whether a family qualifies for assistance in terms of income. Applicants may exclude \$550 for each family member who is under 18, or is disabled or handicapped or a full-time student, but this exclusion does not apply to "the head of the household or his spouse." Also to be excluded is any payment by a member of the family for the support and maintenance of a spouse or former spouse who does not live in the household.

In the National Affordable Housing program, marital status also is significant. The program is intended to assist families, and particularly "first-time homebuyers," in buying homes. "First-time homebuyer" is defined, in part, as an individual "and his or her spouse" who have not owned a home during the preceding 3 years.

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<sup>2</sup>Under welfare reform, AFDC will be replaced by Temporary Assistance for Needy Families in July 1997. States will have the option of terminating Medicaid benefits for individuals who refuse to work.

In the Food Stamp program (also to be broadly affected by welfare reform), marital status is not central, but does play a role. Eligibility for benefits under the program is determined on the basis of households, and "household" includes not only spouses who live together, but also groups of individuals who live together and customarily buy and prepare food together.

#### CATEGORY 2—VETERANS' BENEFITS

Veterans' benefits, which are codified in Title 38 of the United States Code, include pensions, indemnity compensation for service-connected deaths, medical care, nursing home care, right to burial in veterans' cemeteries, educational assistance, and housing. Husbands or wives of veterans have many rights and privileges by virtue of the marital relationship.

A surviving spouse or child of a veteran is entitled to receive monthly dependency and indemnity compensation payments when the veteran's death was service-connected, and to receive a monthly pension when the veteran's death was not service-connected. If it is discovered that a veteran's marriage is invalid, the purported marriage may nevertheless be deemed valid under certain circumstances, as long as a "real" widow or widower does not ask for benefits.

Veterans who have at least a 30 percent disability are entitled to additional disability compensation if they have dependents. For this purpose a spouse is considered a dependent. A veteran's spouse may also receive compensation if a veteran disappears. On the other hand, a spouse's estate is considered along with the veteran's when the Secretary of Veterans Affairs determines whether it is reasonable that some part of the veteran's assets be used for the veteran's maintenance and whether the Secretary should discontinue paying the pension.

The spouses of certain veterans are entitled to medical care provided by the government. In determining, based on income and assets, whether a veteran has the ability to defray necessary home care and medical expenses, the property of the spouse of the veteran is included as an asset of the veteran. Spouses of veterans may be beneficiaries of National Service Life Insurance, and are also eligible for interment in national cemeteries if the veteran is eligible. The surviving spouse of a veteran who died of a service-connected disability is entitled to educational assistance for up to 45 months, and to job counseling, training, and placement services. Spouses and widows or widowers of certain veterans also enjoy preferences in federal employment.

#### CATEGORY 3—TAXATION

The distinction between married and unmarried status is pervasive in federal tax law; this is one of the largest categories, with 179 provisions. Tax law does not define such terms as "husband," "wife," or "married."

Marital status figures in federal tax law in provisions as basic as those giving married taxpayers the option to file joint or separate income tax returns. It is also seen in the related provisions prescribing different tax consequences depending on whether a taxpayer is married filing jointly,

married filing separately, unmarried but the head of a household, or unmarried and not the head of a household.

The different treatment in the tax code of married couples and single individuals gives rise to one of the most contentious tax policy issues, the so-called marriage penalty (and its counterpart, the marriage bonus). This issue comes into play in connection with income tax rates, the treatment of capital losses, credits for the elderly and disabled, taxation of Social Security benefits, and a number of other provisions of the tax code. In our report, Tax Administration: Income Tax Treatment of Married and Single Individuals,<sup>3</sup> we identified 59 provisions in income tax law under which tax liability depends in part on whether a taxpayer is married or single.

Marital status also plays a key role in the estate and gift tax laws and in the part of the tax code dealing with taxation on the sale of property. For estate tax purposes, property transferred to one spouse as the result of the death of another is deductible for purposes of determining the value of the decedent's estate. Gifts from one spouse to another are deductible for purposes of the gift tax. Gifts from one spouse to a third party are deemed to be from both spouses equally. The law permits transfers of property from one spouse to another (or to a former spouse if the transfer is incident to a divorce) without any recognition of gain or loss for tax purposes. These provisions permit married couples to transfer substantial sums to one another, and to third parties, without tax liability in circumstances in which single people would not enjoy the same privilege.

#### CATEGORY 4—FEDERAL CIVILIAN AND MILITARY SERVICE BENEFITS

This category includes laws dealing with current and retired federal officers and employees, members of the Armed Forces, elected officials, and judges, in which marital status is a factor. Typically these laws address the various health, leave, retirement, survivor, and insurance benefits provided by the United States to those in federal service and their families.

Over 270 of the 1049 provisions we found fall in this category. They appear primarily in Title 5 of the United States Code, Government Organization and Employees, for civilian employees, and Title 10, Armed Forces, for military members. However, parallel provisions are found in 19 other titles covering, for example, Foreign Service officers (Title 22, Foreign Relations and Intercourse), Central Intelligence Agency employees (Title 50, War and National Defense), Lighthouse Service employees (Title 33, Navigation and Navigable Waters), and members of the Coast Guard (Title 14, Coast Guard).

Marital status is a factor in these laws in many ways. Among the laws governing federal employees and officers, it figures in the following provisions: a law establishing health benefits or survivor benefits for spouses; a law prescribing the order of precedence in payment of final paychecks and life insurance benefits of employees or officers who die without having designated

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<sup>3</sup>GAO/GGD-96-175, September 3, 1996.



a beneficiary; and a law determining the rights of current or former spouses to a retirement annuity after the death of an employee.

In addition, under provisions for reimbursement of employees' expenses in connection with a government-ordered relocation, spouses are eligible for per diem allowances or subsistence payments. Federal civil service employees are entitled to unpaid leave in order to care for a spouse with a serious health problem, and an employee disabled by work-related injuries receives augmented compensation if he or she is married.

A different set of laws governs military personnel and their families. Some of the provisions unique to military service include: employment assistance and transitional services for spouses of members being separated from military service; continued commissary privileges for dependents, including spouses, of members separated for spousal or child abuse, and the right of minor spouses of overseas military personnel to free secondary education through the Defense Department school system.

#### CATEGORY 5—EMPLOYMENT BENEFITS AND RELATED LAWS

Marital status comes into play in many different ways in federal laws relating to employment in the private sector. Most such laws appear in Title 29 of the United States Code, Labor. However, others are in Title 30, Mineral Lands and Mining; Title 33, Navigation and Navigable Waters; and Title 45, Railroads.

This category includes laws that address the rights of employees under employer-sponsored employee benefit plans; that provide for continuation of employer-sponsored health benefits after events like the death or divorce of the employee; and that give employees the right to unpaid leave in order to care for a seriously ill spouse. In addition, Congress has extended special benefits in connection with certain occupations, like mining and public safety. The spouse of a coal miner who dies of black lung disease is entitled to benefits, for example. The surviving spouse of a public safety officer killed in the line of duty is eligible for a death benefit of up to \$100,000.

Spouses are sometimes excluded from coverage as employees under certain laws. For example, under the National Labor Relations Act, an individual working for his or her spouse does not come within the definition of "employee," and therefore does not have the right, available under the Act to other employees, to organize or to engage in collective bargaining. If the only regular employees of a business are the owner and his or her spouse, then the business is not subject to regulation of wages and hours under the Fair Labor Standards Act of 1938 (FLSA). Similarly, the spouse or other family member of an employer working in agriculture is not covered under FLSA requirements like minimum wage.

Some laws protect the interests of one spouse when the other becomes eligible for some benefit. The Employee Retirement Income Security Act prohibits an employee from changing

beneficiaries in a retirement plan or from waiving the joint and survivor annuity form of retirement benefit, without the written consent of his or her spouse.

The Railroad Retirement Act confers many rights on retired railroad employees and their spouses. Spouses may be eligible for annuities and lump sum benefits. Congress has also enacted a workers' compensation law for longshore and harbor workers that establishes survivor benefits for spouses.

#### CATEGORY 6—IMMIGRATION, NATURALIZATION, AND ALIENS

This category includes laws governing the conditions under which noncitizens may enter and remain in the United States, be deported, or become citizens. Most are found in Title 8, Aliens and Nationality.

The law gives special consideration to spouses of immigrants and aliens in a wide variety of circumstances. Under immigration law, aliens may receive special status by virtue of their employment, and that treatment may extend to their spouses. For example, the spouses of aliens who come to the United States on a temporary basis (to work as registered nurses, seasonal agricultural workers, or in certain specialty occupations), and who meet other criteria, are not subject to the worldwide numerical limitations on levels of immigration. Also, spouses of aliens granted asylum can be given the same status if they accompany or join their spouses.

Spouses of aliens do not enjoy favored immigration status in all circumstances. Posthumous citizenship is authorized for noncitizen members of the armed forces who die during hostilities, but not for their spouses. When the government revokes the citizenship of someone because it was obtained through misconduct, and that person's spouse derived his or her citizenship from the marriage, the spouse's citizenship will also be revoked.

Some provisions of immigration law are designed to prevent misuse of marital status. The law calls for termination of the permanent resident status of an alien granted on the basis of marriage, if it is determined that the marriage was for the purpose of procuring the alien's entry to the United States, or if the marriage is annulled or terminated (other than through the death of a spouse) within two years.

The Congress recently limited the eligibility of qualified aliens for certain federal programs—such as SSI, Temporary Assistance for Needy Families (which will replace AFDC), and Social Services block grants—but it made a few exceptions, one of which directly benefits spouses of veterans. Aliens who are serving on active duty in the Armed Forces or who are honorably discharged veterans, and their spouses, remain eligible for these benefits in the same manner as a citizen. Federal law also provides that the incomes of the sponsor of an immigrant, and of the sponsor's spouse, are to be taken into account in determining the immigrant's eligibility for means-tested public benefits.

#### CATEGORY 7—INDIANS

The indigenous peoples of the United States have long had a special legal relationship with the federal government through treaties and laws that are classified to Title 25, Indians. Various laws set out the rights to tribal property of white men marrying Indian women, or of Indian women marrying white men, the evidence that is required, and the rights of children born of marriages between white men and Indian women.<sup>4</sup>

The law also establishes Indians' rights to develop descent and distribution rights regarding their property as long as they include certain provisions. Most relevant to this discussion is the right of a surviving spouse who is neither an Indian nor a member of the deceased spouse's tribe to elect a life estate in property that he or she is occupying at the time of the death of the other spouse. Another law governing rights of Navajo and Hopi Indians gives relocation benefits to spouses who relinquish their life estates.

Health services can also be made available to otherwise ineligible spouses of an eligible Indian if all such spouses are made eligible by an appropriate resolution of the governing body of the tribe. Health professionals seeking positions in the Indian Health Service and their spouses may be reimbursed for actual and reasonable expenses incurred in traveling to and from their homes to an area in which they could be assigned to allow them to evaluate the area with respect to the assignment.

#### CATEGORY 8—TRADE, COMMERCE, AND INTELLECTUAL PROPERTY

This category includes provisions concerning foreign or domestic business and commerce, from the following titles of the United States Code: Bankruptcy, Title 11; Banks and Banking, Title 12; Commerce and Trade, Title 15; Copyrights, Title 17; and Customs Duties, Title 19.

Federal law prescribes the right of debtors to seek bankruptcy protection and the rights of creditors when their debtors adopt that strategy. It expressly permits spouses to file jointly for bankruptcy protection. This may benefit both the debtors and their creditors: the married couple pays only one filing fee and creditors file only one claim.

Bankruptcy law prescribes how to distribute the assets of a bankrupt person, assigns specific priorities to different classes of creditors, and permits a bankrupt debtor to be "discharged" (i.e., released) from the obligation to repay certain debts. A former spouse of the debtor making a claim in a bankruptcy proceeding for payments pursuant to a divorce decree or separation agreement is given a higher priority than some other creditors. Also, a discharge in bankruptcy generally does not relieve a debtor of the obligation to pay alimony or support to a spouse or former spouse in connection with a divorce decree or separation agreement.

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<sup>4</sup>The laws in this category dealing with marriage that use the terms "Indian" and "white" are more than 100 years old, and have not been amended since their enactment in 1888.

The National Housing Act addresses the rights of mortgage borrowers. Banks often use a so-called due-on-sale clause in mortgage agreements that permits them to declare the loan payable in full if the borrower sells the property without their consent. The Act prohibits use of the due-on-sale clause in case of transfers of residential property from one spouse to another.

For some purposes, the laws regulating investment companies and advisers apply not only to the advisers themselves, but also to what the law terms "interested persons." "Interested persons" is defined to include the spouses of certain persons, of their parents, and of their children.

The Consumer Credit Protection Act regulates some aspects of garnishment of wages, a legal process whereby a creditor collects a debt by having the debtor's employer pay part of the debtor's wages directly to the creditor. The Act establishes that at most 25 percent of the disposable earnings of an individual can be withheld through garnishment. However, if the purpose of the garnishment is to enforce an order for the support of a spouse, the maximum is 60 percent or, if the wage earner is supporting a spouse (not the former spouse for whose benefit the support order was issued), 50 percent.

The Copyright Act gives renewal rights and termination rights, in some circumstances, to the widow or widower of the creator of a copyrighted work. The law defines "widow or widower" as the creator's surviving spouse under the law of the creator's domicile at the time of his or her death, whether or not the spouse subsequently remarries.

The amount of customs duty on imported merchandise depends on its value. Under the law, the actual transaction value—that is, how much the buyer paid the seller—may be used to establish value if the buyer and seller are not "related." For this purpose, spouses are deemed to be related. Also, certain countries that deny or restrict the ability of their citizens to emigrate in order to join "close relatives" in the United States can be penalized by the imposition of restrictions on their trade with the United States. "Close relative," for purposes of this law, includes a spouse.

Under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, the federal government provides a mechanism for financing programs to strengthen the market for cut flowers and greens, through an assessment of "handlers" of these products whose annual sales exceed \$750,000. Marital status comes into play in determining whether a handler meets the \$750,000 threshold: for this purpose, sales by one spouse are attributed to the other.

#### CATEGORY 8—FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

Federal law imposes obligations on Members of Congress, employees or officers of the federal government, and members of the boards of directors of some government-related or government-chartered entities, to prevent actual or apparent conflicts of interest. These individuals are required to disclose publicly certain gifts, interests, and transactions. Many of these requirements, which are found in 16 different titles of the United States Code, apply also to the individual's spouse.

The law regulates the conditions under which gifts from foreign governments and international organizations may be accepted by spouses of employees of the Postal Service, the Postal Rate Commission, certain government contractors, employees of the District of Columbia government, members of the uniformed services, Members of Congress, the President, and the Vice President. Employees of executive, legislative, and judicial agencies may not appoint relatives, including spouses, to agencies in which they serve or exercise control. The spouses of members of the Senate may not accept, in any calendar year, gifts worth more than \$250, without getting a waiver.

Elsewhere in the Code are rules intended to prevent conflicts of interest on the part of members of various councils and boards. For instance, members of the boards of directors of the National Sheep Industry Improvement Center and the Alternative Agricultural Research and Commercialization Corporation are prohibited from participating in any matter pending before either board in which a spouse holds an interest. The law governing the members of Regional Fishery Management Councils is somewhat different. Members are required to disclose and make available for public inspection any financial interests they or their spouses might have in an activity that the councils might undertake.

Another variation in the treatment of conflict of interest involving spouses appears in connection with the National Foundation for Biomedical Research. Instead of prescribing conflict of interest rules for the Foundation, the Congress directed it to devise its own standards. However, those standards must ensure that officers, employees and agents of the Foundation (including members of the Board), and their spouses, avoid encumbrances that could result in a financial conflict of interest or a divided allegiance.

#### CATEGORY 10—CRIMES AND FAMILY VIOLENCE

This category includes laws that implicate marriage in connection with criminal justice or family violence. The nature of these provisions varies greatly. Some deal with spouses as victims of crimes, others with spouses as perpetrators. These laws are found primarily in Title 18, Crimes and Criminal Procedure, but some, dealing with crime prevention and family violence, are in Title 42, The Public Health and Welfare.

Attempting to influence a United States official through threats directed at a spouse is a federal crime, as are killing, or attempting to kill, foreign officials or their spouses, or threatening to kill certain persons protected by the Secret Service, such as major presidential candidates and their spouses.

Under federal criminal statutes, spouses and others have some protections against domestic violence. It is a federal crime for a person to travel across a state line with the intent to injure a spouse or "intimate partner" if that person intentionally commits a crime of violence and causes bodily injury to the spouse or intimate partner. The term "spouse or intimate partner" is broadly defined to include a former spouse, someone who "shares a child in common" with the abuser, and someone who "cohabits or has cohabited with the abuser as a spouse."

In some cases, marriage can be a factor in triggering criminal liability. For example, a widow's or widower's entitlement to federal employee survivor payments ceases upon remarriage; such a widow or widower who remarries and continues to accept payment may, if found guilty, be fined or imprisoned.

Claiming marital status that does not exist can also be a crime. Falsely representing oneself to be the spouse or surviving spouse of an individual in order to elicit information about the Social Security number, date of birth, employment, wages, or benefits of that individual, is a felony.

Comprehensive crime control legislation directed the Attorney General to study the means by which abusive spouses obtain information concerning the addresses or locations of estranged or former spouses, despite the desire of the victims to have the information withheld. Congress also has charged the National Commission on Crime Prevention and Control to evaluate the adequacy of federal and state laws on sexual assault and the need for a more uniform statutory response to sex offenses. This mandate specifically addresses sexual assaults and other sex offenses committed by offenders who are known, or related by blood or marriage, to the victim.

Criminal justice grants are given to encourage arrest of domestic violence offenders; "domestic violence" includes an act of violence by a current or former spouse. Another provision gives nationals of the United States who are victims of acts of terrorism committed outside the United States, and their survivors, including spouses, a statutory right to bring a civil action for treble damages.

#### CATEGORY 11—LOANS, GUARANTEES, AND PAYMENTS IN AGRICULTURE

Under many federal loan programs, a spouse's income, business interests, or assets are taken into account for purposes of determining a person's eligibility to participate in the program. In other instances, marital status is a factor in determining the amount of federal assistance to which a person is entitled, or the repayment schedule.

Education loan programs are found primarily in Title 20, Education; housing loan programs for veterans are found in Title 38, Veterans' Benefits. Title 7, Agriculture, includes provisions governing agricultural price supports and loan programs that are affected by the spousal relationship.

Under the federal family education loan program, the income and assets of an independent student's spouse are attributed to the student for purposes of determining whether the student is eligible for a loan and, if so, the amount. Married couples may consolidate their separate student loans into one if they agree to be jointly and severally liable for repayment of the consolidated loan, without regard either to the amounts of the respective loan obligations to be consolidated or to any subsequent change in their marital status. Under the federal direct student loan program, the Secretary of Education, in order to determine the annual repayment amount when repayment is contingent on the borrower's income, may obtain information regarding the income not only of

the borrower but also of the borrower's spouse. Repayment schedules are generally based on the adjusted gross income of both spouses.

Many of the laws governing veterans' benefits implicate marital status. Eligibility for assistance in borrowing for housing extends to the surviving spouses of veterans who die from a service-connected disability, and to the spouses of certain veterans who, for more than 90 days, have been missing in action, captured by hostile forces, or forcibly detained by a foreign government.

The laws governing agriculture include provisions for price supports and loan programs that are affected by marital status. For example, the law limits the amount of certain crop support payments that any one person can receive. For this purpose, a husband and wife are considered to be one person, except to the extent each may have owned property individually before the marriage. Also, agricultural loans for real estate, operating expenses, and emergencies may be made to "family farms," defined as those farms in which a majority interest is held by individuals related by marriage or blood.

## CATEGORY 12—FEDERAL NATURAL RESOURCES AND RELATED LAWS

Federal law gives special rights to spouses in connection with a variety of transactions involving federal lands and other federal property. These transactions include purchase and sale of land by the federal government and lease by the government of water and mineral rights.

When the government purchases land for national battlefields, monuments, seashores, or parks, the law commonly allows those from whom the land is purchased and their spouses to continue to use and occupy it during their lifetimes. For example, those owning houses (and their spouses) when the Stones River National Battlefield and Sleeping Bear Dunes National Lakeshore were created have life estates in the land. Although these laws affect relatively few individuals, we found more than 40 such provisions in Title 16, Conservation.

In addition to playing a role under these provisions for the government to buy land, spousal relationship has also been a factor in determining priorities among potential buyers when the government is selling federal lands. For example, when Congress decided in 1955 to terminate ownership of land used by the Atomic Energy Commission and sell it to local entities and private parties, it generally barred any transfer of priorities for purchase, but allowed a husband and wife to exercise a priority in their joint names.

The marital relationship may affect whether an individual can be considered a surface mine owner with whom the Secretary of Labor can negotiate a lease. To be designated a surface mine owner, an individual must hold legal or equitable title to the land for a 3-year period and his or her principal residence must be on the land. In computing the 3-year period, the Secretary may include periods during which a relative by blood or marriage, including a spouse, owned the land.

Under laws governing reclamation and irrigation of lands by the federal government, the basic unit of ownership is 160 irrigable acres. Under certain conditions, if the death of a spouse causes lands in private ownership to become excess lands (having more than 160 acres) but those lands were eligible to receive water from a project under the Federal reclamation laws without a recordable contract, the Secretary of the Interior is authorized to furnish water to them, without requiring the contract, as long as the lands are owned by the surviving spouse. If the surviving spouse remarries, the exception no longer applies, and lands in excess of 160 irrigable acres are appraised in the usual manner.

## CATEGORY 13—MISCELLANEOUS

This category comprises laws that do not fit readily in any of the other categories and that in our judgment did not warrant a separate category. It is a heterogeneous mix of provisions from 14 titles of the United States Code.



Fourteen statutes in the Code that prohibit discrimination on the basis of marital status are listed in this category. For example, such discrimination is prohibited in executive agencies, and is unlawful for a creditor in private financial transactions.

This category includes the laws chartering various patriotic societies, such as the Veterans of Foreign Wars, that have as one of their purposes to assist the widows and children of servicemen or others. The Gold Star Wives of America and Navy Wives Clubs of America have one of our search terms in their titles.

We also included in this category laws related to the federal financing of presidential election campaigns. To be eligible for federal funds, candidates may not spend more than \$50,000 of their own money or that of members of their immediate families for their campaigns. A spouse or a close relative's spouse is deemed to be a member of the candidate's immediate family for this purpose.

**Tables of Laws in the United States Code  
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