# EXHIBIT F

## STATEMENT FROM ELAINE KAPLAN, OPM GENERAL COUNSEL

There have been some developments in the Ninth Circuit regarding access to benefits for same-sex spouses of federal employees, and there's some confusion over this important issue. Specifically, Karen Golinski, an employee of the Federal Courts, filed a grievance against her employer claiming that the denial of enrollment of her same-sex spouse in the Federal Employees Health Benefits Plan (FEHBP) violated the Ninth Circuit's Equal Employment Opportunity policy. Ninth Circuit Chief Judge Alex Kozinski, sitting in his administrative capacity, and not as a federal judge in a court case, said that employees of the court were entitled to FEHBP health benefits for their same-sex spouses. OPM must administer the FEHBP in a lawful manner, and the Department of Justice (DOJ) has advised OPM that providing those benefits would violate the so-called "Defense of Marriage Act."

All federal employees – be they in the Executive, Legislative or Judicial branch – receive their heath care benefits in the FEHBP, which is administered by OPM. Spouses and minor children of federal employees are eligible to be enrolled in the FEHBP. However, in 1996, the so-called "Defense of Marriage Act" was signed into law and it states that the word "spouse," when used in a federal statute, can mean only opposite-sex spouses. In other words, the current federal law means that same-sex spouses are ineligible to be enrolled in federal benefit programs that define eligibility based on their status as spouses. As the President has explained, the Administration believes that this law is discriminatory and needs to be repealed by Congress – that is why President Obama has stated that he opposes DOMA and supports its legislative repeal. He also has said he supports the Domestic Partner Benefits and Obligations Act (DPBO), which would allow all same-sex domestic partners of federal employees to receive federal benefits, including enrollment in the FEHB Plan.

It's important to understand that Judge Kozinski was acting as an administrative official in this matter, reacting to the concerns of an employee of the judiciary. He was not acting as a federal judge in a court case. This does not mean that the inability to extend benefits to Karen Golinski's spouse is any less real or less painful, but it is a critical point.

The decision in this matter was not reached lightly – after we learned of this development, we examined our options and consulted with the DOJ. DOJ advised us that the order issued by Judge Kozinski does not supersede our obligation to comply

with existing law because it is not binding on OPM, as it was issued in his administrative capacity, and not as a judge in a court case. Thus, this type of order does not change the existing law, which DOJ concludes prevents the enrollment. DOJ also advised us that DOMA prohibits same-sex spouses of federal employees from enrolling in the FEHBP and that the law does not permit OPM to allow this enrollment to proceed.

This issue shows exactly why Congress needs to repeal DOMA and pass the DPBO. In fact, the passage of the DPBO would remedy this situation in a way that reaches beyond this individual case involving an employee of the judiciary by providing benefits to same-sex domestic partners of all federal employees across the government whether or not they are married. That is why the Administration has testified before Congress on this crucial legislation, and why the President has personally called for its passage.