



NASFAA Annual State and Regional Training Materials

Need Analysis – Addendum

This addendum is provided to bring attention to Dear Colleague Letter GEN-13-12, Attachment B which was published before the Supreme Court's decision on the Defense of Marriage Act (DOMA) and the Department of Education's related guidance. Please note that questions 2, 10 and 17 in Attachment B are no longer valid. To supplement the information provided in the handout, NASFAA is providing the attached addendum, which includes:

- GEN 13-12, Attachment B with questions 2, 10, and 17 highlighted;
- GEN-13-25, Supreme Court Ruling on the Defense of Marriage Act and the Implications for the Title IV Student Financial Assistance Programs;
- GEN-14-14, Additional Guidance on the Supreme Court's Ruling on the Defense of Marriage Act and Its Implications for the Title IV Student Financial Assistance Programs; and
- GEN-14-15, Additional Guidance on the Supreme Court's Ruling on the Defense of Marriage Act.

GEN-13-25 provides general guidance on the impact of the DOMA decision on the Title IV programs. GEN-14-14 provides guidance on the eligibility of stepparents to borrow PLUS and the impact of the DOMA decision on income-based repayment plans. GEN-14-15 addresses the eligibility of spouses of certain active duty military personnel for in-state tuition at public institutions.

Attachment B to DCL GEN-13-12

Changes to Parental Information FAFSA Collection Frequently Asked Questions (FAQ) April 29, 2013

Notice: Questions 2, 10, and 17 of this attachment are no longer valid. We have included DCL GEN 13-25, GEN 14-14, and GEN 14-15 which contain current ED guidance.

Q1. What changes will be made to the collection of parental information on the Free Application for Federal Student Aid (FAFSA)?

A1. Beginning with the 2014-2015 FAFSA, a dependent student¹ will be required to include income and other information about both of the student's legal parents (biological or adoptive) if the parents are living together, regardless of the parents' marital status or gender.

Q2. Is this a change from previous FAFSA parental information collection?

A2. Yes. Despite the statutory provisions that only use the terms "parent" and "parents", the FAFSA has long been constructed to collect information about both of a dependent student's parents only if the parents are married. Thus, the FAFSA has used the gender-specific terms "mother/stepmother," and "father/stepfather." As a result, the FAFSA did not collect income and other information from one of a student's legal parents if the parents are unmarried, even if they are living together. Moreover, because the Defense of Marriage Act (DOMA) provides that same sex marriages are not recognized for federal purposes, and because the FAFSA only collected parental information if the parents were married, it similarly excluded income and other information from a same sex spouse when the same sex parents are married under state law.

Q3. Why is this collection of FAFSA information for both of the legal parents being made?

A3. Collecting parental information from both of a dependent student's legal parents will result in fair treatment of all families by eliminating longstanding inequities that were based on the legal relationship of the parents (married or not married) rather than on the parents' relationship with their child. This change will ensure that limited taxpayer resources are directed to students with the most need, regardless of the student's parents' marital status or gender, when those parents reside in the same household. It also recognizes the diversity of today's American families.

¹ For federal student aid purposes a dependent student is one who does not meet one of the qualifications for independent student status in section 480(d) of the Higher Education Act of 1965, as amended.

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Q4. How will the collection of information from both of a dependent student's legal parents (if they are living together) be used in determining the student's eligibility for federal student aid.

A4. The income and other information from both parents will be used to calculate the dependent student's expected family contribution (EFC), which, in turn will determine the student's eligibility for aid from the need-based federal student assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA).

Q5. What is an Expected Family Contribution (EFC)?

A5. Expected family contribution (EFC) is a statutorily established term that represents a financial index used to determine, in part, the student's eligibility for, and amount of, need-based Title IV HEA student assistance. Generally, the lower a student's EFC the more need-based federal student aid eligibility the student has. A dependent student's EFC includes a "parental contribution" that is based on parental information collected on the FAFSA. The EFC formulas are provided in Part F of Title IV of the HEA.

Q6. What are the Title IV need-based student assistance programs?

A6. The need-based Title IV HEA student assistance programs are the Federal Pell Grant, Federal Direct Subsidized Loan, Federal Perkins Loan, Federal Work Study (FWS), and Federal Supplemental Educational Opportunity Grants (FSEOG) programs.

Q7. What is the legal basis for using information from the unmarried legal parent of a dependent student in the calculation of the student's EFC?

A7. The collection of information from both of a dependent student's parents is statutorily supported in the section of the Higher Education Act (HEA) that describes the information to be used in the calculation of a dependent student's expected family contribution (EFC). HEA section 475 generally includes the terms "parent" and "parents" and not terms like "mother", "father", or "spouse".

Q8. Does this change the parental information that must be provided on the FAFSA when the student's parent is divorced from the student's other legal parent?

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A8. This change does not impact the longstanding and statutorily required provision that when a dependent student's parents are divorced information is reported only for the parent with whom the student resided for the greater portion of the 12 months preceding the date of completing the FAFSA. Collecting information from the unmarried legal parents of a dependent student will mirror that provision by not requiring the second legal parent's information if the student's unmarried parents do not live together. Under longstanding policy, in both circumstances, if the other parent provides financial support to the student, that support should be reported on the FAFSA in the "Untaxed Income" section.

Q9. Will information about a stepparent continue to be used in the calculation of a dependent student's EFC?

A9. Yes. The HEA provides that when a dependent student's parent is married to a person who is not the student's legal parent the stepparent's information is used in the EFC calculation [see HEA section 475(f)(3)].

Q10. Does the stepparent provision apply when the student's parent is married, under state law, to a person of the same sex but is not one of the student's legal parents?

A10. It does not. The Defense of Marriage Act (DOMA) does not recognize, for federal purposes, same sex marriages. Therefore, for purposes of the FAFSA, under DOMA there can be no stepparent who is of the same sex as the student's parent.

Q11. Which dependent students will be impacted by the collection of FAFSA information for both of the student's legal parents?

A11. Most dependent students will not be impacted because those students are already reporting parental information for their legal parent or married parents. Only in the limited number of instances where both of the student's legal parents are living together but are unmarried, or are of the same sex and whose marriage is recognized under State but not Federal law, will information that was not previously collected be collected and used in the EFC calculation.

Q12. What will be the impact of the collection of FAFSA information for both of the student's legal parents on the dependent student's Title IV eligibility?

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A12. In most of instances there will be less eligibility as more income and other financial resources are included in the EFC calculation. In a small number of cases there will be more Title IV eligibility because under the statutory formulas the offset for the additional person in the household will be greater than the limited income from that person.

Q13. What is the estimated savings or costs to the Title IV student assistance programs of this change?

A13. We are unable to estimate the impact of these changes, either in terms of number of students impacted or to the total cost/savings to the programs. There are no available data regarding students whose parent was reported on the FAFSA as “single,” but who is living with the student’s other legal parent.

Q14. How will FAFSA applicants and their families know about this change in the parental information that must be reported on the FAFSA?

A14. The instructions on the FAFSA will be modified to explain to the applicant that questions about the student’s parents relate to the student’s legal parents regardless of their marital status or gender, if those parents live together. A student’s legal parents are the student’s biological and/or adoptive parents. The Department will continue to work with the financial aid community and other interested constituencies, to develop the exact language of these instructions.

Q15. How will financial and other information about a student’s unmarried parents be collected on the FAFSA?

A15. The 2014-2015 FAFSA will include a new response of “Unmarried and both parents living together” to the FAFSA question that asks for the marital status of the dependent student’s parents. Thus, the possible responses will be “Never married”, “Married or remarried”, “Unmarried and both parents living together”, “Divorced or separated”, and “Widowed”. Expanded FAFSA instructions and help text will be provided to explain to the dependent student applicant that the parents’ marital status question and other questions that refer to the student’s parents mean the student’s legal (biological or adoptive) parents if those parents are living together.

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Since parents who are not married could not have filed a joint IRS tax return together, FOTW will provide instructions on how the family should respond to questions such as “tax filing status”, “type of tax return”, and to Adjusted Gross Income (AGI) and other tax return questions. This also applies to married parents whose IRS filing status is “Married filing separately”.

Q16. Will the collection of income and other information from the second parent impact state, institutional and private student aid programs?

A16. Many state and some institutional and private aid programs use the EFC calculated from the FAFSA for determining a student’s eligibility. The administrators of those programs will need to determine, after considering the impact of this change and the reasons for it, whether to continue to use the FAFSA calculated EFC.

Q17. How will this change impact independent students?

A17. This change will not impact independent students. This change is only about using information about a dependent student’s legal parents. Married students of the opposite sex will continue to be considered independent, under HEA section 480(d), and information about both spouses will be collected and used in the calculation of the student’s EFC. Consistent with provisions of the Defense of Marriage Act (DOMA), a student in a same-sex marriage under state law must answer the student marital status question as “single”. This means that the income and other information from the student’s same-sex spouse is not collected and used in the calculation of the student’s EFC, as it would be for opposite sex married couples.

Q18. What impact could the Supreme Court decision in the case involving a challenge to the constitutionality of the Defense of Marriage Act (DOMA) have on the subjects discussed above?

A18. We cannot provide information about such an impact until the Court has issued and we have reviewed the decision.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

DEC 13 2013

GEN 13-25

Subject: Supreme Court Ruling on the Defense of Marriage Act and the Implications for the Title IV Student Financial Assistance Programs

Summary: This letter provides important information on the use of “marriage” and “spouse” in the Title IV Student Financial Assistance Programs and on completion of the Free Application for Federal Student Aid (FAFSA), under the Supreme Court’s decision invalidating Section 3 of the Defense of Marriage Act (*United States v. Windsor*).

Dear Colleague:

The U.S. Department of Education (Department) is providing guidance on the impact of the Supreme Court’s recent decision on same-sex marriages, *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), on federal student aid and especially on the Free Application for Federal Student Aid (FAFSA). Until this ruling, the Department had interpreted all provisions of Title IV of the Higher Education Act of 1965, as amended (HEA), affecting FAFSA consistent with Section 3 of the Defense of Marriage Act (DOMA). Section 3 of DOMA prohibited all federal agencies from recognizing same-sex marriages for purposes of federal programs, including the student financial assistance programs authorized under Title IV of the HEA (Title IV HEA programs). Specifically, Section 3 provided that “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” In *Windsor*, the Supreme Court held that Section 3 of DOMA is unconstitutional because it violates the principles of due process and equal protection. Upon review of the *Windsor* decision, the Department is providing the following information concerning the application of *Windsor* to the Title IV HEA programs.

For purposes of the Title IV HEA programs, a student or a parent is considered married if the student or parent was legally married in any domestic or foreign jurisdiction¹ that recognizes the relationship as a valid marriage, regardless of where the couple resides. The Department is applying a “place of celebration” rule and, accordingly, has determined that any legal marriage that is recognized by the jurisdiction in which the marriage was celebrated will be recognized for

¹ This includes marriages recognized by the laws of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, any other territory or possession of the United States, and any foreign jurisdiction having the legal authority to sanction marriages.

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Title IV HEA program purposes without regard to whether the marriage is between persons of the same sex or opposite sex, and without regard to where the couple resides.

This determination applies to both a student and to the parents of a dependent student. It also applies to a student attending an institution located in a jurisdiction that recognizes same-sex marriage and in a jurisdiction (e.g., a state) that does not recognize same-sex marriage. Further, this determination applies only to marriages and does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.² Finally, this determination is relevant to all questions concerning marriage and marital status on the FAFSA.

Implications for FAFSA Completion and EFC Calculation³

The following provides information on the implementation of the *Windsor* decision as it relates to completion of a FAFSA and the resultant calculation of the student's Expected Family Contribution (EFC).

Consistent with *Windsor*, legally married same-sex couples will be treated as married for all FAFSA and EFC calculation purposes. Therefore, a student who does not meet any of the other standards for independent student status will be considered to be an independent student for purposes of FAFSA completion and EFC calculation if the student is legally married, without regard to whether the student is in a same-sex or opposite-sex marriage. For a dependent student, the parental information required to be reported on the FAFSA, and which will be used in the EFC calculation, will be that of both of the student's parents, again without regard to whether the parents are in a same-sex or opposite-sex marriage. This includes, as it does for opposite-sex marriages, information about the same-sex spouse of the student's parent (i.e., the stepparent).

Matters Specific to the 2013-2014 FAFSA

First-Time 2013-2014 FAFSA Applicants

Implementation of the *Windsor* decision for the 2013-2014 FAFSA will depend on whether the student is submitting a 2013-2014 FAFSA for the first time or the student has previously submitted a 2013-2014 FAFSA. As of the date of this letter, a student who submits a 2013-2014 FAFSA for the first time is expected to respond to all questions related to the marital status of the student and, if the student is dependent, questions related to the student's parents in accordance with the information in this letter.

² Consistent with long-standing policy guidance, persons considered to be married under a state's common law are considered to be married for purposes of the Title IV student financial assistance programs.

³ There are other provisions of the HEA that may be impacted by *Windsor*. These include the calculation of loan repayment amounts under the Title IV income-driven repayment plans and the eligibility of a stepparent to apply for a Direct PLUS Loan. Any changes regarding these and other HEA provisions in light of the Supreme Court's decision are currently under review and will be announced in separate communications.

Thus, responses to the FAFSA marital status questions must be “married” if the student or parent was, as of the date of the FAFSA submission, legally married in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country, without regard to whether the marriage is between persons of the same or opposite sex or where the married couple resides or where the student attends school.

Previously Submitted 2013-2014 FAFSAs

We have carefully considered the Court’s ruling as it relates to 2013-2014 FAFSA correcting and updating policies. Those policies include the “snapshot” nature of FAFSA completion that, for most data items, generally allows correcting but not updating the FAFSA after it has been initially submitted. Under current policy, an applicant who has already submitted marital status information as initially reported on the FAFSA must correct that information if it was inaccurate. For purposes of dependency status, a student may submit a marital status update to request that his or her marital status be updated. Information about a dependent student’s parents’ marital status, however, may not be updated if that marital status changes after the initial FAFSA submission.

We have determined that as a result of the *Windsor* decision, an applicant who had previously submitted a 2013-2014 FAFSA, but who was unable to respond to marital status questions as “married” due to Section 3 of DOMA, may choose to submit a correction to FAFSA-reported marital status information. These optional changes for 2013-2014 to the impacted student’s and/or to the dependent student’s parents’ marital status will be permitted, since they do not represent a change in marital status, but rather an acknowledgment of the marital status at the time of the initial FAFSA submission. This choice only applies if the impacted student and/or parent was legally married at the time the FAFSA was initially completed. If the marriage occurred after the initial FAFSA submission, the regular provisions concerning when marital status can be updated apply just as those provisions apply for opposite-sex couples.

Implementation Procedures

For 2013-2014, institutions will be required to follow special procedures if it is a student’s or dependent student’s parents’ marital status that is being changed. If the student or parent chooses to make a change in marital status consistent with the information provided above, the student’s resultant EFC must be used by all institutions for all 2013-2014 FAFSA and EFC purposes, even if that means that the student’s 2013-2014 financial aid package must be modified.

Additionally, as noted above, our current policies permit a student to use the FAFSA corrections process to request an update to the student’s marital status after initial submission. This same request process will continue to apply to marital status changes requested by students. If the change is requested because the student’s marital status changed after the initial FAFSA submission, institutional discretion would apply as it typically does under current policies for marital status changes applicable to opposite-sex couples. If, however, the reason for the requested change is that the student was married at the time of initial 2013-2014 FAFSA

submission but was unable to respond as married because of Section 3 of DOMA, the institution must approve the student's request.

Changes to either the student's or the dependent student's parents' marital status because of the *Windsor* decision will necessitate changes to other required FAFSA information. For example, a change in the student's marital status would require a number of income items and other FAFSA items to also be updated to account for the spouse's income and other information, including family size. For the parents of a dependent student, FAFSA information must be changed to include income, family size, and other information from both of the student's parents.

Instructions and Revised Guidance

The 2013-2014 FAFSA includes instructions concerning marital status questions on the FAFSA that are no longer accurate as a result of the *Windsor* ruling. Since the FAFSA processing for 2013-2014 is under way, and new forms cannot be released in the ongoing aid year, revised guidance for applicants who are completing the FAFSA marital status questions will be provided at our studentaid.gov Web site and at our Federal Student Aid Information Center at 1-800 4 FED AID (1-800-433-3243).

Matters Specific to the 2014-2015 FAFSA and Subsequent Years' FAFSA

For the 2014-2015 FAFSA and for all subsequent FAFSA years, all responses to questions related to the marital status of the student and, if the student is dependent, questions related to the student's parents must be in accordance with the information provided in this letter. Therefore, responses to the FAFSA marital status questions must be "married" if the student or parent was legally married in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country, without regard to whether the marriage was between persons of the same sex or opposite sex or where the couple resides or where the student will be attending school.

We also note that upcoming changes to the 2014-2015 FAFSA on the Web are in progress and will include the use of gender neutral terminology such as "Parent 1, Stepparent 1" and "Parent 2, Stepparent 2." The use of these terms is similar to the gender neutral FAFSA terminology announced in the April 2013 Dear Colleague Letter GEN-13-12, which references a dependent student's legal parents who are unmarried and living together. Responses to other questions on the FAFSA must also be consistent with the information provided in this letter. For example, a student who is legally married to a person of the same sex must report that person's income, assets, and other information, just as is required for a student who is married to a person of the opposite sex. Similarly, a dependent student's FAFSA must include information on both of the student's legally married parents (or parent and stepparent) without regard to whether they are in a same-sex or opposite-sex marriage. Note that the same information is also required of both parents when the response to the parental marital status question is "unmarried and living together," except that in such cases there can be no stepparent, as explained in GEN-13-12.

Summary

For 2013-2014 first-time FAFSAs, all responses to questions related to the marital status of the student and, if the student is dependent, the student's parents must be in accordance with the information provided in this letter. Students who had previously submitted a 2013-2014 FAFSA may, but are not required to, change their or their parents' marital status if the student or parents were in a legal same-sex marriage at the time of the initial submission of the 2013-2014 FAFSA. If the change is either not related to the *Windsor* decision or the student's or parents' marital status changed after initial FAFSA submission, regular Department policies would apply, including the special process for updating a student's marital status for dependency purposes.

For the 2014-2015 FAFSA and for all subsequent FAFSA years, all responses to questions related to the marital status of the student and, if the student is dependent, the student's parents must be in accordance with the information provided in this letter.

The Department may issue additional guidance regarding the information contained in this letter as well as guidance concerning other provisions of the HEA that are impacted by *Windsor*. Revised applicant instructions for the FAFSA will also be available on our studentaid.gov Web site and from our Federal Student Aid Information Center at 1-800 4 FED AID (1-800-433-3243). Institutions that have questions regarding the information in this letter may contact Federal Student Aid's Research and Customer Care Center (Care Center) staff. Staff is available Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. (Eastern Time) at 1-800-433-7327. After hours calls will be accepted by an automated voice response system. Callers leaving their names and phone numbers will receive a return call the next business day. Alternatively, you may e-mail the Care Center at fsa.customer.support@ed.gov.

Sincerely,



Brenda Dann-Messier

Acting Assistant Secretary for Postsecondary Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-14-14

Subject: Additional Guidance on the Supreme Court's Ruling on the Defense of Marriage Act and Its Implications for the Title IV Student Financial Assistance Programs

Summary: This letter provides information on how the Supreme Court's *Windsor* decision affects the eligibility of stepparents to receive Direct PLUS Loans. It also provides information on the treatment of same-sex married borrowers under the Title IV income-driven repayment plans.

Dear Colleague:

In Dear Colleague Letter GEN-13-25, we provided guidance on how the Supreme Court's decision in *United States v. Windsor*, 570 U.S. ____, 133 S. Ct. 2675 (2013) (*Windsor*), which invalidated section 3 of the Defense of Marriage Act (DOMA), affected how students and families complete the Free Application for Federal Student Aid (FAFSA). We stated that for purposes of the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, the U.S. Department of Education now applies a "place of celebration" rule, and, accordingly, has determined that any legal marriage that is recognized by the jurisdiction in which the marriage was celebrated will be recognized without regard to whether the marriage is between persons of the same sex or opposite sex, and without regard to where the couple resides.

In that earlier letter, we further stated that we would subsequently provide guidance on other aspects of the student financial assistance programs that were impacted by the *Windsor* decision. In this letter, the Office of Postsecondary Education is providing information on the impact of the *Windsor* decision on the eligibility of a stepparent to receive a Direct PLUS Loan and on the treatment of same-sex married borrowers under the income-driven repayment plans. The letter does not impose any requirements beyond those set forth in applicable law and regulations.

Stepparent Eligibility for a Direct PLUS Loan

Under the William D. Ford Federal Direct Loan (Direct Loan) Program, a dependent undergraduate student's biological or adoptive parent and, in most cases, the spouse of the student's biological or adoptive parent (a stepparent) may apply for a Direct PLUS Loan to help pay for the cost of the student's postsecondary education. Consistent with the *Windsor* decision, a stepparent, who meets the definition of "parent" in 34 CFR 668.2, and who is of the same sex as the dependent student's biological or adoptive

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parent, may apply for a Direct PLUS Loan if the stepparent and parent were legally married in any domestic or foreign jurisdiction that recognizes the relationship as a valid marriage, regardless of where the couple resides. In addition, such a stepparent will have to meet the eligibility requirements for a parent to receive a Direct PLUS Loan as stated in 34 CFR 685.200(c).

As a reminder, a Direct PLUS Loan for any parent, including a stepparent, can only be originated while the dependent student is currently enrolled, on at least a half-time basis, for the period of enrollment for which the loan is intended.

Income-Driven Repayment Plans

The Direct Loan Program and the Federal Family Education Loan (FFEL) Program offer borrowers the option of repaying their eligible loans under repayment plans that base the required monthly payment amount on the borrower's income and family size. These "income-driven" repayment plans include the Income-Based Repayment Plan (IBR Plan), the Pay As You Earn Repayment Plan (Pay As You Earn Plan), and the Income-Contingent Repayment Plan (ICR Plan). The IBR Plan is available to borrowers in both the Direct Loan and FFEL programs. The Pay As You Earn Plan and the ICR Plan are available only to borrowers in the Direct Loan Program.

Under certain circumstances the income and/or Federal student loan debt of a borrower's spouse is taken into account when determining the borrower's eligibility for an income-driven repayment plan and, if eligible, the required monthly payment amount. A borrower's spouse is counted when determining the borrower's family size.

Consistent with the *Windsor* decision, and for all income-driven repayment plan purposes, the term "spouse" includes a same-sex spouse if the borrower and spouse were legally married in any domestic or foreign jurisdiction that recognizes the relationship as a valid marriage, regardless of where the couple resides. We expect all FFEL Program participants to comply with this guidance, including those that are agencies within a jurisdiction that does not recognize same-sex marriages.

If a borrower who is repaying a loan under an income-driven repayment plan requests that the loan holder recalculate the borrower's monthly payment amount based on information about a same-sex spouse that the borrower did not previously report because the marriage was not recognized by the U.S. Department of Education prior to the *Windsor* decision, and if the loan holder recalculates the payment amount based on the borrower's request, any adjustment to the borrower's calculated monthly payment amount applies only to payments due after the date the updated information is reported. Note also that, in accordance with 34 CFR 682.215(e)(2), any such adjustment resets the annual payment period, and the loan holder must send the borrower a written notification containing pertinent information.

Comments and questions regarding the information in this letter may be sent to Federal Student Aid's Research and Customer Care Center (Care Center) staff. Staff is available Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. (Eastern Time) at 1-800-433-7327. After hours calls will be accepted by an automated voice response system. Callers leaving their names and phone numbers will receive a return call the next business day. Alternatively, you may e-mail the Care Center at fsa.customer.support@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn B. Mahaffie", with a long horizontal flourish extending to the right.

Lynn B. Mahaffie
Acting Assistant Secretary



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-14-15

Subject: Additional Guidance on the Supreme Court's Ruling on the Defense of Marriage Act

Summary: This letter provides information on how the Supreme Court's *Windsor* decision affects the eligibility of spouses of certain members of the armed forces to receive in-State tuition at public institutions of higher education.

Dear Colleague:

In Dear Colleague Letters GEN-13-25 and GEN-14-14, we provided guidance on how the Supreme Court's decision in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), that invalidated section 3 of the Defense of Marriage Act (DOMA), affected:

- How students and families complete the Free Application for Federal Student Aid (FAFSA);
- How parents of dependent undergraduate students qualify for Direct PLUS Loans; and
- How married borrowers repay their federal student loans under income-driven repayment plans.

In this letter we provide information on the impact of the *Windsor* decision on the eligibility of spouses of certain members of the armed forces to receive in-State tuition at public institutions of higher education, as provided for in section 135 of the Higher Education Act of 1965, as amended (HEA). In general, section 135 requires a State that receives assistance under the HEA not to charge a member of the armed forces who is on active duty for more than 30 days and whose domicile or permanent duty station is in the State more than the in-State tuition rate for attendance at a public institution of higher education. Critical to the subject of this letter is that section 135 also provides that the spouse or dependent child of such a service member may not be charged more than the in-State tuition rate.

Until the Supreme Court's decision on same-sex marriages in *Windsor*, the U.S. Department of Education (Department) had interpreted all provisions of the HEA consistent with section 3 of DOMA. Section 3 of DOMA prohibited federal agencies from recognizing same-sex marriages. Specifically, section 3 provided that "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." In *Windsor*, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of due process and equal protection.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

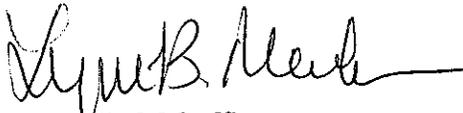
Following the *Windsor* decision, the Department has determined that any legal marriage that is recognized by the jurisdiction in which the marriage was celebrated will be recognized without regard to whether the marriage is between persons of the same sex or opposite sex, and without regard to where the couple resides. This determination applies only to marriages and does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under State law.

This interpretation applies to any use of the word "spouse" in the HEA, including section 135. Thus, under section 135, as discussed above, a "spouse" to whom a public institution of higher education must extend in-State tuition benefits includes a spouse in a same-sex marriage who is married to a member of the armed forces, provided that the couple was legally married in any domestic or foreign jurisdiction that recognizes the relationship as a valid marriage.

We expect all States that receive assistance under the HEA and their public institutions of higher education to comply with section 135 of the HEA, regardless of any conflicting provisions of State law. If a State that receives assistance under the HEA does not comply with section 135, the Department may take appropriate steps to ensure compliance.

The Office of Postsecondary Education issues this letter to provide information on the effect of the U.S. Supreme Court's decision in *United States v. Windsor* with respect to the extension of in-State tuition benefits to a spouse in a same-sex marriage who is married to a member of the armed forces. This letter does not impose any requirements beyond those set forth in applicable law. If you are interested in commenting on this letter, please e-mail your comment to Jessica.Finkel@ed.gov or write to us at the following address: Office of Postsecondary Education, 1990 K St., N.W., Office 8031, Washington, DC 20006.

Sincerely,



Lynn B. Mahaffie
Acting Assistant Secretary