



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