



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